

Environmental Protection Agency

Pt. 97

(2) By September 1, of the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x Ozone Season opt-in unit under paragraph (a)(2) of this section.

[70 FR 25382, May 12, 2005, as amended at 71 FR 25396, Apr. 28, 2006]

PART 97—FEDERAL NO_x BUDGET TRADING PROGRAM AND CAIR NO_x AND SO₂ TRADING PROGRAMS

Subpart A—NO_x Budget Trading Program General Provisions

Sec.

- 97.1 Purpose.
- 97.2 Definitions.
- 97.3 Measurements, abbreviations, and acronyms.
- 97.4 Applicability.
- 97.5 Retired unit exemption.
- 97.6 Standard requirements.
- 97.7 Computation of time.

Subpart B—NO_x Authorized Account Representative for NO_x Budget Sources

- 97.10 Authorization and responsibilities of NO_x authorized account representative.
- 97.11 Alternate NO_x authorized account representative.
- 97.12 Changing NO_x authorized account representative and alternate NO_x authorized account representative; changes in owners and operators.
- 97.13 Account certificate of representation.
- 97.14 Objections concerning NO_x authorized account representative.

Subpart C—Permits

- 97.20 General NO_x Budget Trading Program permit requirements.
- 97.21 Submission of NO_x Budget permit applications.
- 97.22 Information requirements for NO_x Budget permit applications.
- 97.23 NO_x Budget permit contents.
- 97.24 NO_x Budget permit revisions.

Subpart D—Compliance Certification

- 97.30 Compliance certification report.

- 97.31 Administrator's action on compliance certifications.

Subpart E—NO_x Allowance Allocations

- 97.40 Trading program budget.
- 97.41 Timing requirements for NO_x allowance allocations.
- 97.42 NO_x allowance allocations.
- 97.43 Compliance supplement pool.

Subpart F—NO_x Allowance Tracking System

- 97.50 NO_x Allowance Tracking System accounts.
- 97.51 Establishment of accounts.
- 97.52 NO_x Allowance Tracking System responsibilities of NO_x authorized account representative.
- 97.53 Recordation of NO_x allowance allocations.
- 97.54 Compliance.
- 97.55 Banking.
- 97.56 Account error.
- 97.57 Closing of general accounts.

Subpart G—NO_x Allowance Transfers

- 97.60 Submission of NO_x allowance transfers.
- 97.61 EPA recordation.
- 97.62 Notification.

Subpart H—Monitoring and Reporting

- 97.70 General requirements.
- 97.71 Initial certification and recertification procedures.
- 97.72 Out of control periods.
- 97.73 Notifications.
- 97.74 Recordkeeping and reporting.
- 97.75 Petitions.
- 97.76 Additional requirements to provide heat input data.

Subpart I—Individual Unit Opt-ins

- 97.80 Applicability.
- 97.81 General.
- 97.82 NO_x authorized account representative.
- 97.83 Applying for NO_x Budget opt-in permit.
- 97.84 Opt-in process.
- 97.85 NO_x Budget opt-in permit contents.
- 97.86 Withdrawal from NO_x Budget Trading Program.
- 97.87 Change in regulatory status.
- 97.88 NO_x allowance allocations to opt-in units.

Subpart J—Appeal Procedures

- 97.90 Appeal procedures.

Pt. 97

40 CFR Ch. I (7–1–06 Edition)

Subpart AA—CAIR NO_x Annual Trading Program General Provisions

- 97.101 Purpose.
- 97.102 Definitions.
- 97.103 Measurements, abbreviations, and acronyms.
- 97.104 Applicability.
- 97.105 Retired unit exemption.
- 97.106 Standard requirements.
- 97.107 Computation of time.
- 97.108 Appeal procedures.

Subpart BB—CAIR Designated Representative for CAIR NO_x Sources

- 97.110 Authorization and responsibilities of CAIR designated representative.
- 97.111 Alternate CAIR designated representative.
- 97.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
- 97.113 Certificate of representation.
- 97.114 Objections concerning CAIR designated representative.
- 97.115 Delegation by CAIR designated representative and alternate CAIR designated representative.

Subpart CC—Permits

- 97.120 General CAIR NO_x Annual Trading Program permit requirements.
- 97.121 Submission of CAIR permit applications.
- 97.122 Information requirements for CAIR permit applications.
- 97.123 CAIR permit contents and term.
- 97.124 CAIR permit revisions.

Subpart DD [Reserved]

Subpart EE—CAIR NO_x Allowance Allocations

- 97.140 State trading budgets.
- 97.141 Timing requirements for CAIR NO_x allowance allocations.
- 97.142 CAIR NO_x allowance allocations.
- 97.143 Compliance supplement pool.
- 97.144 Alternative of allocation of CAIR NO_x allowances and compliance supplement pool by permitting authority.

APPENDIX A TO SUBPART EE OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING ALLOCATIONS

Subpart FF—CAIR NO_x Allowance Tracking System

- 97.150 [Reserved]
- 97.151 Establishment of accounts.
- 97.152 Responsibilities of CAIR authorized account representative.

- 97.153 Recordation of CAIR NO_x allowance allocations.
- 97.154 Compliance with CAIR NO_x emissions limitation.
- 97.155 Banking.
- 97.156 Account error.
- 97.157 Closing of general accounts.

Subpart GG—CAIR NO_x Allowance Transfers

- 97.160 Submission of CAIR NO_x allowance transfers.
- 97.161 EPA recordation.
- 97.162 Notification.

Subpart HH—Monitoring and Reporting

- 97.170 General requirements.
- 97.171 Initial certification and recertification procedures.
- 97.172 Out of control periods.
- 97.173 Notifications.
- 97.174 Recordkeeping and reporting.
- 97.175 Petitions.

Subpart II—CAIR NO_x Opt-in Units

- 97.180 Applicability.
- 97.181 General.
- 97.182 CAIR designated representative.
- 97.183 Applying for CAIR opt-in permit.
- 97.184 Opt-in process.
- 97.185 CAIR opt-in permit contents.
- 97.186 Withdrawal from CAIR NO_x Annual Trading Program.
- 97.187 Change in regulatory status.
- 97.188 CAIR NO_x allowance allocations to CAIR NO_x opt-in units.

APPENDIX A TO SUBPART II OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING CAIR NO_x OPT-IN UNITS

Subpart AAA—CAIR SO₂ Trading Program General Provisions

- 97.201 Purpose.
- 97.202 Definitions.
- 97.203 Measurements, abbreviations, and acronyms.
- 97.204 Applicability.
- 97.205 Retired unit exemption.
- 97.206 Standard requirements.
- 97.207 Computation of time.
- 97.208 Appeal procedures.

Subpart BBB—CAIR Designated Representative for CAIR SO₂ Sources

- 97.210 Authorization and responsibilities of CAIR designated representative.
- 97.211 Alternate CAIR designated representative.
- 97.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

Environmental Protection Agency

Pt. 97

- 97.213 Certificate of representation.
- 97.214 Objections concerning CAIR designated representative.
- 97.215 Delegation by CAIR designated representative and alternate CAIR designated representative.

Subpart CCC—Permits

- 97.220 General CAIR SO₂ Trading Program permit requirements.
- 97.221 Submission of CAIR permit applications.
- 97.222 Information requirements for CAIR permit applications.
- 97.223 CAIR permit contents and term.
- 97.224 CAIR permit revisions.

Subparts DDD—EEE [Reserved]

Subpart FFF—CAIR SO₂ Allowance Tracking System

- 97.250 [Reserved]
- 97.251 Establishment of accounts.
- 97.252 Responsibilities of CAIR authorized account representative.
- 97.253 Recordation of CAIR SO₂ allowances.
- 97.254 Compliance with CAIR SO₂ emissions limitation.
- 97.255 Banking.
- 97.256 Account error.
- 97.257 Closing of general accounts.

Subpart GGG—CAIR SO₂ Allowance Transfers

- 97.260 Submission of CAIR SO₂ allowance transfers.
- 97.261 EPA recordation.
- 97.262 Notification.

Subpart HHH—Monitoring and Reporting

- 97.270 General requirements.
- 97.271 Initial certification and recertification procedures.
- 97.272 Out of control periods.
- 97.273 Notifications.
- 97.274 Recordkeeping and reporting.
- 97.275 Petitions.

Subpart III—CAIR SO₂ Opt-in Units

- 97.280 Applicability.
- 97.281 General.
- 97.282 CAIR designated representative.
- 97.283 Applying for CAIR opt-in permit.
- 97.284 Opt-in process.
- 97.285 CAIR opt-in permit contents.
- 97.286 Withdrawal from CAIR SO₂ Trading Program.
- 97.287 Change in regulatory status.
- 97.288 CAIR SO₂ allowance allocations to CAIR SO₂ opt-in units.

APPENDIX A TO SUBPART III OF PART 97—
STATES WITH APPROVED STATE IMPLE-

MENTATION PLAN REVISIONS CONCERNING
CAIR SO₂ OPT-IN UNITS

Subpart AAAA—CAIR NO_x Ozone Season Trading Program General Provisions

- 97.301 Purpose.
- 97.302 Definitions.
- 97.303 Measurements, abbreviations, and acronyms.
- 97.304 Applicability.
- 97.305 Retired unit exemption.
- 97.306 Standard requirements.
- 97.307 Computation of time.
- 97.308 Appeal procedures.

APPENDIX A TO SUBPART AAAA OF PART 97—
STATES WITH APPROVED STATE IMPLE-
MENTATION PLAN REVISIONS CONCERNING
APPLICABILITY

Subpart BBBB—CAIR Designated Representative for CAIR NO_x Ozone Season Sources

- 97.310 Authorization and responsibilities of CAIR designated representative.
- 97.311 Alternate CAIR designated representative.
- 97.312 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.
- 97.313 Certificate of representation.
- 97.314 Objections concerning CAIR designated representative.
- 97.315 Delegation by CAIR designated representative and alternate CAIR designated representative.

Subpart CCCC—Permits

- 97.320 General CAIR NO_x Ozone Season Trading Program permit requirements.
- 97.321 Submission of CAIR permit applications.
- 97.322 Information requirements for CAIR permit applications.
- 97.323 CAIR permit contents and term.
- 97.324 CAIR permit revisions.

Subpart DDDD [Reserved]

Subpart EEEE—CAIR NO_x Ozone Season Allowance Allocations

- 97.340 State trading budgets.
- 97.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations.
- 97.342 CAIR NO_x Ozone Season allowance allocations.
- 97.343 Alternative of allocation of CAIR NO_x Ozone Season allowances by permitting authority.

§ 97.1

APPENDIX A TO SUBPART EEEE OF PART 97—
STATES WITH APPROVED STATE IMPLEMENTATION
PLAN REVISIONS CONCERNING ALLOCATIONS

Subpart FFFF—CAIR NO_x Ozone Season Allowance Tracking System

- 97.350 [Reserved]
- 97.351 Establishment of accounts.
- 97.352 Responsibilities of CAIR authorized
account representative.
- 97.353 Recordation of CAIR NO_x Ozone Season
allowance allocations.
- 97.354 Compliance with CAIR NO_x emissions
limitation.
- 97.355 Banking.
- 97.356 Account error.
- 97.357 Closing of general accounts.

Subpart GGGG—CAIR NO_x Ozone Season Allowance Transfers

- 97.360 Submission of CAIR NO_x Ozone Season
allowance transfers.
- 97.361 EPA recordation.
- 97.362 Notification.

Subpart HHHH—Monitoring and Reporting

- 97.370 General requirements.
- 97.371 Initial certification and recertification
procedures.
- 97.372 Out of control periods.
- 97.373 Notifications.
- 97.374 Recordkeeping and reporting.
- 97.375 Petitions.

Subpart IIII—CAIR NO_x Ozone Season Opt- in Units

- 97.380 Applicability.
- 97.381 General.
- 97.382 CAIR designated representative.
- 97.383 Applying for CAIR opt-in permit.
- 97.384 Opt-in process.
- 97.385 CAIR opt-in permit contents.
- 97.386 Withdrawal from CAIR NO_x Ozone
Season Trading Program.
- 97.387 Change in regulatory status.
- 97.388 CAIR NO_x Ozone Season allowance al-
locations to CAIR NO_x Ozone Season opt-
in units.

APPENDIX A TO SUBPART IIII OF PART 97—
STATES WITH APPROVED STATE IMPLEMENTATION
PLAN REVISIONS CONCERNING
CAIR NO_x OZONE SEASON OPT-IN UNITS

APPENDIX A TO PART 97—FINAL SECTION 126
RULE: EGU ALLOCATIONS, 2003–2007

APPENDIX B TO PART 97—FINAL SECTION 126
RULE: NON-EGU ALLOCATIONS, 2003–2007

APPENDIX C TO PART 97—FINAL SECTION 126
RULE: TRADING BUDGET, 2003–2007

APPENDIX D TO PART 97—FINAL SECTION 126
RULE: STATE COMPLIANCE SUPPLEMENT
POOLS FOR THE SECTION 126 FINAL RULE
(TONS)

40 CFR Ch. I (7–1–06 Edition)

AUTHORITY: 42 U.S.C. 7401, 7403, 7410, 7426,
7601, and 7651, *et seq.*

SOURCE: 65 FR 2727, Jan. 18, 2000, unless
otherwise noted. 71 FR 25396, 25422, and 25443,
Apr. 28, 2006

Subpart A—NO_x Budget Trading Program General Provisions

§ 97.1 Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the federal NO_x Budget Trading Program, under section 126 of the CAA and § 52.34 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

§ 97.2 Definitions.

The terms used in this part shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each NO_x Allowance Tracking System account.

Acid Rain emissions limitation means, as defined in § 72.2 of this chapter, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the Clean Air Act.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to NO_x allowances, the determination by the Administrator of the number of NO_x allowances to be initially credited to a NO_x Budget unit or an allocation set-aside.

Automated data acquisition and handling system or DAHS means that component of the CEMS, or other emissions monitoring system approved for use under subpart H of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the

measured parameters in the measurement units required by subpart H of this part.

Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Clean Air Act means the Clean Air Act, 42 U.S.C. 7401 et seq.

Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

Combustion turbine means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 97.4(b), § 97.5, or subpart I of this part, for a unit that is a NO_x Budget unit under § 97.4(a) on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in § 97.4(b), § 97.5, or subpart I of this part, for a unit that is not a NO_x Budget unit under § 97.4(a) on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under § 97.4(a) shall be the unit's date of commencement of commercial operation.

Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in § 97.4(b), § 97.5, or subpart I of this part for a unit that is a NO_x Budget unit under § 97.4(a) on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as pro-

vided in § 97.4(b), § 97.5, or subpart I of this part, for a unit that is not a NO_x Budget unit under § 97.4(a) on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under § 97.4(a) shall be the unit's date of commencement of operation.

Common stack means a single flue through which emissions from two or more units are exhausted.

Compliance account means a NO_x Allowance Tracking System account, established by the Administrator for a NO_x Budget unit under subpart F of this part, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x Budget emissions limitation.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart H of this part to sample, analyze, measure, and provide, by means of readings taken at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides (NO_x) emissions, stack gas volumetric flow rate or stack gas moisture content (as applicable), in a manner consistent with part 75 of this chapter. The following are the principal types of continuous emission monitoring systems required under subpart H of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated DAHS. A NO_x concentration monitoring system provides a permanent, continuous record of NO_x emissions in units of parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated DAHS. A NO_x concentration monitoring system provides a permanent,

continuous record of: NO_x concentration in units of parts per million (ppm), diluent gas concentration in units of percent O₂ or CO₂ (percent O₂ or CO₂), and NO_x emission rate in units of pounds per million British thermal units (lb/mmBtu); and

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of percent H₂O (percent H₂O).

Control period means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.

Electricity for sale under firm contract to the grid means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a guaranteed commitment to deliver, even under adverse conditions.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with subpart H of this part.

Energy Information Administration means the Energy Information Administration of the United States Department of Energy.

Excess emissions means any tonnage of nitrogen oxides emitted by a NO_x Budget unit during a control period that exceeds the NO_x Budget emissions limitation for the unit.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil fuel fired means, with regard to a unit:

(1) For units that commenced operation before January 1, 1996, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1995, or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;

(2) For units that commenced operation on or after January 1, 1996 and

before January 1, 1997, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during 1996; or

(3) For units that commence operation on or after January 1, 1997:

(i) The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year; or

(ii) The combination of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that the unit shall be “fossil fuel-fired” as of the date, during such year, on which the unit begins combusting fossil fuel.

General account means a NO_x Allowance Tracking System account, established under subpart F of this part, that is not a compliance account or an overdraft account.

Generator means a device that produces electricity.

Heat input means, with regard to a specified period to time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the NO_x authorized account representative and as determined by the Administrator in accordance with subpart H of this part. Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified

amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the ability of a unit to combust a stated maximum amount of fuel per hour (in mmBtu/hr) on a steady state basis, as determined by the physical design and physical characteristics of the unit.

Maximum potential hourly heat input means an hourly heat input (in mmBtu/hr) used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with part 75 of this chapter, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

Maximum potential NO_x emission rate means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential concentration of NO_x under section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O₂) or the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

Maximum rated hourly heat input means a unit specific maximum hourly heat input (in mmBtu/hr) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

Monitoring system means any monitoring system that meets the requirements of subpart H of this part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

Most stringent State or Federal NO_x emissions limitation means the lowest NO_x emissions limitation (in lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.

Non-title V permit means a federally enforceable permit administered by the permitting authority pursuant to the Clean Air Act and regulatory authority under the Clean Air Act, other than title V of the Clean Air Act and part 70 or 71 of this chapter.

NO_x allowance means a limited authorization by the Administrator under the NO_x Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter, except as provided under §97.54(f). No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under §97.4(b) or §97.5 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization, which does not constitute a property right. For purposes of all sections of this part except §97.40, §97.41, §97.42, §97.43, or §97.88, "NO_x allowance" also includes an authorization to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter by the permitting authority or the Administrator in accordance with a State

NO_x Budget Trading Program established, and approved and administered by the Administrator, pursuant to §51.121 of this chapter.

NO_x allowance deduction or *deduct NO_x allowances* means the permanent withdrawal of NO_x allowances by the Administrator from a NO_x Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x Budget unit for a control period, determined in accordance with subparts H and F of this part, or for any other NO_x allowance withdrawal requirement under this part.

NO_x Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of NO_x allowances under the NO_x Budget Trading Program.

NO_x Allowance Tracking System account means an account in the NO_x Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.

NO_x allowance transfer deadline means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances must be submitted for recordation in a NO_x Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x Budget emissions limitation for the control period immediately preceding such deadline.

NO_x allowances held or *hold NO_x allowances* means the NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts F and G of this part, in a NO_x Allowance Tracking System account.

NO_x authorized account representative means, for a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program or, for a general account, the natural per-

son who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of NO_x allowances held in the general account.

NO_x Budget emissions limitation means, for a NO_x Budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit under §97.54(a), (b), (e), and (f) in a control period adjusted by deductions of such NO_x allowances to account for actual heat input under §97.42(e) for the control period or to account for excess emissions for a prior control period under §97.54(d) or to account for withdrawal from the NO_x Budget Trading Program, or for a change in regulatory status, of a NO_x Budget opt-in unit under §97.86 or §97.87.

NO_x Budget opt-in permit means a NO_x Budget permit covering a NO_x Budget opt-in unit.

NO_x Budget opt-in unit means a unit that has been elected to become a NO_x Budget unit under the NO_x Budget Trading Program and whose NO_x Budget opt-in permit has been issued and is in effect under subpart I of this part.

NO_x Budget permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the NO_x Budget Trading Program requirements applicable to a NO_x Budget source, to each NO_x Budget unit at the NO_x Budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x Budget source and each NO_x Budget unit.

NO_x Budget source means a source that includes one or more NO_x Budget units.

NO_x Budget Trading Program means a multistate nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with this part and pursuant to §52.34 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.

NO_x Budget unit means a unit that is subject to the NO_x Budget emissions limitation under §97.4(a) or §97.80.

Operating means, with regard to a unit under §§97.22(d)(2) and 97.80, having documented heat input for more

than 876 hours in the 6 months immediately preceding the submission of an application for an initial NO_x Budget permit under § 97.83(a). The unit's documented heat input will be determined in accordance with part 75 of this chapter if the unit was otherwise subject to the requirements of part 75 of this chapter during that 6-month period or will be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter during that 6-month period.

Operator means any person who operates, controls, or supervises a NO_x Budget unit, a NO_x Budget source, or a unit for which an application for a NO_x Budget opt-in permit under § 97.83 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Opt-in means to be elected to become a NO_x Budget unit under the NO_x Budget Trading Program through a final, effective NO_x Budget opt-in permit under subpart I of this part.

Overdraft account means the NO_x Allowance Tracking System account, established by the Administrator under subpart F of this part, for each NO_x Budget source where there are two or more NO_x Budget units.

Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under § 97.83 is submitted and not denied or withdrawn; or

(2) Any holder of a leasehold interest in a NO_x Budget unit or in a unit for which an application for a NO_x Budget opt-in permit under § 97.83 is submitted and not denied or withdrawn; or

(3) Any purchaser of power from a NO_x Budget unit or from a unit for which an application for a NO_x Budget opt-in permit under § 97.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an

equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x Budget unit or the unit for which an application for a NO_x Budget opt-in permit under § 97.83 is submitted and not denied or withdrawn; or

(4) With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to the NO_x allowances.

Percent monitor data availability means, for purposes of § 97.43 (a)(1) and § 97.84(b), total unit operating hours for which quality-assured data were recorded under subpart H of this part in a control period, divided by the total number of unit operating hours in the control period, and multiplied by 100 percent.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the NO_x Budget Trading Program in accordance with subpart C of this part.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to NO_x allowances, the movement of NO_x allowances by the Administrator from one NO_x Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing

§ 97.3

40 CFR Ch. I (7–1–06 Edition)

for an air pollutant as specified in appendix A of part 60 of this chapter.

Serial number means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the Administrator, under § 97.53(c).

Source means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the Clean Air Act. For purposes of section 502(c) of the Clean Air Act, a “source,” including a “source” with multiple units, shall be considered a single “facility.”

State means one of the 48 contiguous States or a portion thereof or the District of Columbia that is specified in § 52.34 of this chapter and in which are located units for which the Administrator makes an effective finding under § 52.34 of this chapter.

Submit or *serve* means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any “submission,” “service,” or “mailing” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton or *tonnage* means any “short ton” (i.e., 2,000 pounds). For the purpose of determining compliance with the NO_x Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this part, with any remaining fraction of a ton equal to or greater

than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

Unit means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means any hour (or fraction of an hour) during which a unit combusts any fuel.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21645, Apr. 21, 2004]

§ 97.3 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.
CO₂-carbon dioxide.
hr-hour.
kW-kilowatt electrical.
kWh-kilowatt hour.
lb-pounds.
mmBtu-million Btu.
MWe-megawatt electrical.
NO_x-nitrogen oxides.
O₂-oxygen.
ton-2000 pounds.

§ 97.4 Applicability.

(a) The following units in a State shall be a NO_x Budget unit, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this part:

(1)(i) For units other than cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1996 a generator—

(1) With a nameplate capacity greater than 25 MWe and

(2) Producing electricity for sale under a firm contract to the electric grid.

(B) For units commencing operation in 1997 or 1998, a unit serving during 1997 or 1998 a generator—

(1) With a nameplate capacity greater than 25 MWe and

(2) Producing electricity for sale under a firm contract to the electric grid.

(C) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator—

Environmental Protection Agency

§ 97.4

(1) With a nameplate capacity greater than 25 MWe and

(2) Producing electricity for sale.

(ii) For cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit serving during 1995 or 1996 a generator with a nameplate capacity greater than 25 MWe and failing to qualify as an unaffected unit under § 72.6(b)(4) of this chapter for 1995 or 1996 under the Acid Rain Program.

(B) For units commencing operation in 1997 or 1998, a unit serving during 1997 or 1998 a generator with a nameplate capacity greater than 25 MWe and failing to qualify as an unaffected unit under § 72.6(b)(4) of this chapter for 1997 or 1998 under the Acid Rain Program.

(C) For units commencing operation on or after January 1, 1999, a unit serving at any time a generator with a nameplate capacity greater than 25 MWe and failing to qualify as an unaffected unit under § 72.6(b)(4) of this chapter under the Acid Rain Program for any year.

(2)(i) For units other than cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit—

(1) With a maximum design heat input greater than 250 mmBtu/hr and

(2) Not serving during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(B) For units commencing operation in 1997 or 1998, a unit—

(1) With a maximum design heat input greater than 250 mmBtu/hr and

(2) Not serving during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

(C) For units commencing on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr:

(1) At no time serving a generator producing electricity for sale; or

(2) At any time serving a generator with a nameplate capacity of 25 MWe or less producing electricity for sale and with the potential to use no more than 50 percent of the potential electrical output capacity of the unit.

(ii) For cogeneration units—

(A) For units commencing operation before January 1, 1997, a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying as an unaffected unit under § 72.6(b)(4) of this chapter under the Acid Rain Program for 1995 and 1996.

(B) For units commencing operation in 1997 or 1998, a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying as an unaffected unit under § 72.6(b)(4) under the Acid Rain Program for 1997 and 1998.

(C) For units commencing on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr and qualifying as an unaffected unit under § 72.6(b)(4) of this chapter under the Acid Rain Program for each year.

(b)(1) Notwithstanding paragraph (a) of this section, a unit under paragraph (a)(1) or (a)(2) of this section that has a federally enforceable permit that restricts the unit to combusting only natural gas or fuel oil (as defined in § 75.2 of this chapter) during a control period includes a NO_x emission limitation restricting NO_x emissions during a control period to 25 tons or less, and includes the special provisions in paragraph (b)(4) of this section shall be exempt from the requirements of the NO_x Budget Trading Program, except for the provisions of this paragraph (b), § 97.2, § 97.3, § 97.4(a), § 97.7, and subparts E, F, and G of this part. The NO_x emission limitation under this paragraph (b)(1) shall restrict NO_x emissions during the control period by limiting unit operating hours. The restriction on unit operating hours shall be calculated by dividing 25 tons by the unit's maximum potential hourly NO_x mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default NO_x emission rate otherwise applicable to the unit under § 75.19 of this chapter.

(2) The exemption under paragraph (b)(1) of this section shall become effective as follows:

(i) The exemption shall become effective on the date on which the NO_x emission limitation and the special provisions in the permit under paragraph (b)(1) of this section become final; or

(ii) If the NO_x emission limitation and the special provisions in the permit under paragraph (b)(1) of this section become final during a control period and after the first date on which the unit operates during such control period, then the exemption shall become effective on May 1 of such control period, provided that such NO_x emission limitation and the special provisions apply to the unit as of such first date of operation. If such NO_x emission limitation and special provisions do not apply to the unit as of such first date of operation, then the exemption under paragraph (b)(1) of this section shall become effective on October 1 of the year during which such NO_x emission limitation and the special provisions become final.

(3) The permitting authority that issues a federally enforceable permit under paragraph (b)(1) of this section for a unit under paragraph (a)(1) or (a)(2) of this section will provide the Administrator written notice of the issuance of such permit and, upon request, a copy of the permit.

(4) *Special provisions.* (i) A unit exempt under paragraph (b)(1) of this section shall comply with the restriction on fuel use and unit operating hours described in paragraph (b)(1) of this section during the control period in each year.

(ii) The Administrator will allocate NO_x allowances to the unit under §§ 97.41(a) through (c) and 97.42(a) through (c). For each control period for which the unit is allocated NO_x allowances under §§ 97.41(a) through (c) and 97.42(a) through (c):

(A) The owners and operators of the unit must specify a general account, in which the Administrator will record the NO_x allowances; and

(B) After the Administrator records a NO_x allowance allocations under §§ 97.41(a) through (c) and 97.42(a) through (c), the Administrator will deduct, from the general account under paragraph (b)(4)(ii)(A) of this section, NO_x allowances that are allocated for the same or a prior control period as the NO_x allowances allocated to the unit under §§ 97.41(a) through (c) and 97.42(a) through (c) and that equal the NO_x emission limitation (in tons of NO_x) on which the unit's exemption

under paragraph (b)(1) of this section is based. The NO_x authorized account representative shall ensure that such general account contains the NO_x allowances necessary for completion of such deduction.

(iii) A unit exempt under this paragraph (b) shall report hours of unit operation during the control period in each year to the permitting authority by November 1 of that year.

(iv) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (b)(1) of this section shall retain, at the source that includes the unit, records demonstrating that the conditions of the federally enforceable permit under paragraph (b)(1) of this section were met, including the restriction on fuel use or unit operating hours. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit met the restriction on fuel use or unit operating hours.

(v) The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under paragraph (b)(1) of this section shall comply with the requirements of the NO_x Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(vi) On the earlier of the following dates, a unit exempt under paragraph (b)(1) of this section shall lose its exemption:

(A) The date on which the restriction on fuel use or unit operating hours described in paragraph (b)(1) of this section is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any control period starting in 2004; or

(B) The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction

on fuel use or unit operating hours described in paragraph (b)(1) of this section during any control period starting in 2004.

(vii) A unit that loses its exemption in accordance with paragraph (b)(4)(vi) of this section shall be subject to the requirements of this part. For the purpose of applying permitting requirements under subpart C of this part, allocating allowances under subpart E of this part, and applying monitoring requirements under subpart H of this part, the unit shall be treated as commencing operation and, if the unit is covered by paragraph (a)(1) of this section, commencing commercial operation on the date the unit loses its exemption.

(viii) A unit that is exempt under paragraph (b)(1) of this section is not eligible to be a NO_x Budget opt-in unit under subpart I of this part.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002; 69 FR 21645, Apr. 21, 2004]

§ 97.5 Retired unit exemption.

(a) This section applies to any NO_x Budget unit, other than a NO_x Budget opt-in unit, that is permanently retired.

(b)(1) Any NO_x Budget unit, other than a NO_x Budget opt-in unit, that is permanently retired shall be exempt from the NO_x Budget Trading Program, except for the provisions of this section, § 97.2, § 97.3, § 97.4, § 97.7, and subparts E, F, and G of this part.

(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_x authorized account representative (authorized in accordance with subpart B of this part) shall submit a statement to the permitting authority otherwise responsible for administering any NO_x Budget permit for the unit. The NO_x authorized account representative shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit is permanently retired and will comply with the requirements of paragraph (c) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.

(c) *Special provisions.* (1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The Administrator will allocate NO_x allowances under subpart E of this part to a unit exempt under this section. For each control period for which the unit is allocated one or more NO_x allowances, the owners and operators of the unit shall specify a general account, in which the Administrator will record such NO_x allowances.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_x Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5)(i) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under § 97.22 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of May 31, 2004 or the date on which the unit resumes operation.

(ii) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a non-title V permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under § 97.22 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of May 31, 2004 or the date on which the unit is to first resume operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:

(i) The date on which the NO_x authorized account representative submits a NO_x Budget permit application under paragraph (c)(5) of this section;

(ii) The date on which the NO_x authorized account representative is required under paragraph (c)(5) of this section to submit a NO_x Budget permit application; or

(iii) The date on which the unit resumes operation, if the unit is not required to submit a NO_x permit application.

(7) For the purpose of applying monitoring requirements under subpart H of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

(8) A unit that is exempt under this section is not eligible to be a NO_x Budget opt-in unit under subpart I of this part.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002; 69 FR 21646, Apr. 21, 2004]

§ 97.6 Standard requirements.

(a) *Permit requirements.* (1) The NO_x authorized account representative of each NO_x Budget source required to have a federally enforceable permit and each NO_x Budget unit required to have a federally enforceable permit at the source shall:

(i) Submit to the permitting authority a complete NO_x Budget permit application under § 97.22 in accordance with the deadlines specified in § 97.21(b) and (c);

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a NO_x Budget permit application and issue or deny a NO_x Budget permit.

(2) The owners and operators of each NO_x Budget source required to have a federally enforceable permit and each NO_x Budget unit required to have a federally enforceable permit at the source shall have a NO_x Budget permit issued by the permitting authority and operate the unit in compliance with such NO_x Budget permit.

(3) The owners and operators of a NO_x Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_x Budget permit application, and to have a NO_x Budget permit, under subpart C of this part for such NO_x Budget source.

(b) *Monitoring requirements.* (1) The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source shall comply with the monitoring requirements of subpart H of this part.

(2) The emissions measurements recorded and reported in accordance with subpart H of this part shall be used to determine compliance by the unit with the NO_x Budget emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides requirements.* (1) The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall hold NO_x allowances available for compliance deductions under § 97.54(a), (b), (e), or (f) as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the control period from the unit, as determined in accordance with subpart H of this part, plus any amount necessary to account for actual heat input under § 97.42(e) for the control period or to account for excess emissions for a prior control period under § 97.54(d) or to account for withdrawal from the NO_x Budget Trading Program, or a change in regulatory status, of a NO_x Budget opt-in unit under § 97.86 or § 97.87.

(2) Each ton of nitrogen oxides emitted in excess of the NO_x Budget emissions limitation shall constitute a separate violation of this part, the Clean Air Act, and applicable State law.

(3) A NO_x Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 31, 2004 or the date on which the unit commences operation.

(4) NO_x allowances shall be held in, deducted from, or transferred among NO_x Allowance Tracking System accounts in accordance with subparts E, F, G, and I of this part.

(5) A NO_x allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the NO_x allowance was allocated.

(6) A NO_x allowance allocated by the Administrator under the NO_x Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_x Budget Trading Program. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under §97.4(b) or §97.5 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(7) A NO_x allowance allocated by the Administrator under the NO_x Budget Trading Program does not constitute a property right.

(8) Upon recordation by the Administrator under subpart F or G of this part, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x Budget unit's compliance account or the overdraft account of the source where the unit is located is incorporated automatically in any NO_x Budget permit of the NO_x Budget unit.

(d) *Excess emissions requirements.* (1) The owners and operators of a NO_x Budget unit that has excess emissions in any control period shall:

(i) Surrender the NO_x allowances required for deduction under §97.54(d)(1); and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under §97.54(d)(3).

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise pro-

vided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The account certificate of representation under §97.13 for the NO_x authorized account representative for the source and each NO_x Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation under §97.13 changing the NO_x authorized account representative.

(ii) All emissions monitoring information, in accordance with subpart H of this part; provided that to the extent that subpart H of this part provides for a 3-year period for record-keeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x Budget Trading Program.

(iv) Copies of all documents used to complete a NO_x Budget permit application and any other submission under the NO_x Budget Trading Program or to demonstrate compliance with the requirements of the NO_x Budget Trading Program.

(2) The NO_x authorized account representative of a NO_x Budget source and each NO_x Budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget Trading Program, including those under subpart D, H, or I of this part.

(f) *Liability.* (1) Any person who knowingly violates any requirement or prohibition of the NO_x Budget Trading Program, a NO_x Budget permit, or an exemption under §97.4(b) or §97.5 shall be subject to enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any

record, submission, or report under the NO_x Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the NO_x Budget Trading Program that occurs prior to the date that the revision takes effect.

(4) Each NO_x Budget source and each NO_x Budget unit shall meet the requirements of the NO_x Budget Trading Program.

(5) Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget source or the NO_x authorized account representative of a NO_x Budget source shall also apply to the owners and operators of such source and of the NO_x Budget units at the source.

(6) Any provision of the NO_x Budget Trading Program that applies to a NO_x Budget unit or the NO_x authorized account representative of a NO_x budget unit shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under subpart H of this part, the owners and operators and the NO_x authorized account representative of one NO_x Budget unit shall not be liable for any violation by any other NO_x Budget unit of which they are not owners or operators or the NO_x authorized account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

(g) *Effect on other authorities.* No provision of the NO_x Budget Trading Program, a NO_x Budget permit application, a NO_x Budget permit, or an exemption under § 97.4(b) or § 97.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x Budget source or NO_x Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002]

§ 97.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NO_x Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NO_x Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Subpart B—NO_x Authorized Account Representative for NO_x Budget Sources

§ 97.10 Authorization and responsibilities of NO_x authorized account representative.

(a) Except as provided under § 97.11, each NO_x Budget source, including all NO_x Budget units at the source, shall have one and only one NO_x authorized account representative, with regard to all matters under the NO_x Budget Trading Program concerning the source or any NO_x Budget unit at the source.

(b) The NO_x authorized account representative of the NO_x Budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x Budget units at the source.

(c) Upon receipt by the Administrator of a complete account certificate of representation under § 97.13, the NO_x authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x Budget source represented and each NO_x Budget unit at the source in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners

Environmental Protection Agency

§ 97.12

and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No NO_x Budget permit shall be issued, and no NO_x Allowance Tracking System account shall be established for a NO_x Budget unit at a source, until the Administrator has received a complete account certificate of representation under § 97.13 for a NO_x authorized account representative of the source and the NO_x Budget units at the source.

(e) (1) Each submission under the NO_x Budget Trading Program shall be submitted, signed, and certified by the NO_x authorized account representative for each NO_x Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x Budget sources or NO_x Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a NO_x Budget source or a NO_x Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 97.11 Alternate NO_x authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NO_x authorized ac-

count representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

(b) Upon receipt by the Administrator of a complete account certificate of representation under § 97.13, any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(c) Except in this section and §§ 97.10(a), 97.12, 97.13, and 97.51, whenever the term "NO_x authorized account representative" is used in this part, the term shall be construed to include the alternate NO_x authorized account representative.

§ 97.12 Changing NO_x authorized account representative and alternate NO_x authorized account representative; changes in owners and operators.

(a) *Changing NO_x authorized account representative.* The NO_x authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 97.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

(b) *Changing alternate NO_x authorized account representative.* The alternate NO_x authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 97.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior

to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate NO_x authorized account representative and the owners and operators of the NO_x Budget source and the NO_x Budget units at the source.

(c) *Changes in owners and operators.*

(1) In the event a new owner or operator of a NO_x Budget source or a NO_x Budget unit is not included in the list of owners and operators submitted in the account certificate of representation under § 97.13, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the Administrator, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a NO_x Budget source or a NO_x Budget unit, including the addition of a new owner or operator, the NO_x authorized account representative or alternate NO_x authorized account representative shall submit a revision to the account certificate of representation under § 97.13 amending the list of owners and operators to include the change.

§ 97.13 Account certificate of representation.

(a) A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the NO_x Budget source and each NO_x Budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative.

(3) A list of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source.

(4) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: “I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit.”

(5) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.14 Objections concerning NO_x authorized account representative.

(a) Once a complete account certificate of representation under § 97.13 has been submitted and received, the permitting authority and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under § 97.13 is received by the Administrator.

(b) Except as provided in § 97.12 (a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the NO_x Budget Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative, including private legal disputes concerning the proceeds of NO_x allowance transfers.

Subpart C—Permits

§ 97.20 General NO_x Budget Trading Program permit requirements.

(a) For each NO_x Budget source required to have a federally enforceable permit, such permit shall include a NO_x Budget permit administered by the permitting authority for the federally enforceable permit.

(1) For NO_x Budget sources required to have a title V operating permit, the NO_x Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart or subpart I of this part.

(2) For NO_x Budget sources required to have a non-title V permit, the NO_x Budget portion of the non-title V permit shall be administered in accordance with the permitting authority's regulations promulgated to administer non-title V permits, except as provided otherwise by this subpart or subpart I of this part.

(b) Each NO_x Budget permit shall contain all applicable NO_x Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.

§ 97.21 Submission of NO_x Budget permit applications.

(a) *Duty to apply.* The NO_x authorized account representative of any NO_x Budget source required to have a federally enforceable permit shall submit to the permitting authority a complete NO_x Budget permit application under § 97.22 by the applicable deadline in paragraph (b) of this section.

(b)(1) For NO_x Budget sources required to have a title V operating permit:

(i) For any source, with one or more NO_x Budget units under § 97.4(a) that commence operation before January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 97.22 covering such NO_x Budget units to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before May 31, 2004.

(ii) For any source, with any NO_x Budget unit under § 97.4(a) that commences operation on or after January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 97.22 covering such NO_x Budget unit to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before the later of May 31, 2004 or the date on which the NO_x Budget unit commences operation.

(2) For NO_x Budget sources required to have a non-title V permit:

(i) For any source, with one or more NO_x Budget units under § 97.4(a) that commence operation before January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 97.22 covering such NO_x Budget units to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before May 31, 2004.

(ii) For any source, with any NO_x Budget unit under § 97.4(a) that commences operation on or after January 1, 2001, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 97.22 covering such NO_x Budget unit to the permitting authority at least 18 months (or such lesser time provided

§ 97.22

by the permitting authority) before the later of May 31, 2004 or the date on which the NO_x Budget unit commences operation.

(c) *Duty to reapply.* (1) For a NO_x Budget source required to have a title V operating permit, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 97.22 for the NO_x Budget source covering the NO_x Budget units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

(2) For a NO_x Budget source required to have a non-title V permit, the NO_x authorized account representative shall submit a complete NO_x Budget permit application under § 97.22 for the NO_x Budget source covering the NO_x Budget units at the source in accordance with the permitting authority's non-title V permits regulations addressing permit renewal.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002]

§ 97.22 Information requirements for NO_x Budget permit applications.

A complete NO_x Budget permit application shall include the following elements concerning the NO_x Budget source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the NO_x Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(b) Identification of each NO_x Budget unit at the NO_x Budget source and whether it is a NO_x Budget unit under § 97.4(a) or under subpart I of this part;

(c) The standard requirements under § 97.6; and

(d) For each NO_x Budget opt-in unit at the NO_x Budget source, the following certification statements by the NO_x authorized account representative:

(1) "I certify that each unit for which this permit application is submitted under subpart I of this part is not a NO_x Budget unit under 40 CFR 97.4(a) and is not covered by an exemption under 40 CFR 97.4(b) or 97.5 that is in effect."

40 CFR Ch. I (7–1–06 Edition)

(2) If the application is for an initial NO_x Budget opt-in permit, "I certify that each unit for which this permit application is submitted under subpart I of 40 CFR part 97 is operating, as that term is defined under 40 CFR 97.2."

§ 97.23 NO_x Budget permit contents.

(a) Each NO_x Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete NO_x Budget permit application under § 97.22.

(b) Each NO_x Budget permit is deemed to incorporate automatically the definitions of terms under § 97.2 and, upon recordation by the Administrator under subpart F or G of this part, every allocation, transfer, or deduction of a NO_x allowance to or from the compliance accounts of the NO_x Budget units covered by the permit or the overdraft account of the NO_x Budget source covered by the permit.

§ 97.24 NO_x Budget permit revisions.

(a) For a NO_x Budget source with a title V operating permit, except as provided in § 97.23(b), the permitting authority will revise the NO_x Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

(b) For a NO_x Budget source with a non-title V permit, except as provided in § 97.23(b), the permitting authority will revise the NO_x Budget permit, as necessary, in accordance with the permitting authority's non-title V permits regulations addressing permit revisions.

Subpart D—Compliance Certification

§ 97.30 Compliance certification report.

(a) *Applicability and deadline.* For each control period in which one or more NO_x Budget units at a source are subject to the NO_x Budget emissions limitation, the NO_x authorized account representative of the source shall submit to the permitting authority and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

(b) *Contents of report.* The NO_x authorized account representative shall include in the compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NO_x Budget emissions limitation for the control period covered by the report:

(1) Identification of each NO_x Budget unit;

(2) At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under § 97.54 for the control period;

(3) At the NO_x authorized account representative's option, for units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with subpart H of this part, the percentage of allowances that is to be deducted from each unit's compliance account under § 97.54(e); and

(4) The compliance certification under paragraph (c) of this section.

(c) *Compliance certification.* In the compliance certification report under paragraph (a) of this section, the NO_x authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x Budget units at the source in compliance with the NO_x Budget Trading Program, whether each NO_x Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x Budget Trading Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the NO_x Budget emissions limitation;

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit and contains all information necessary to attribute NO_x emissions to the unit, in accordance with subpart H of this part;

(3) Whether all the NO_x emissions from the unit, or a group of units (including the unit) using a common

stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subpart H of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

(4) Whether the facts that form the basis for certification under subpart H of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subpart H of this part, if any, have changed; and

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

§ 97.31 Administrator's action on compliance certifications.

(a) The Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.

Subpart E—NO_x Allowance Allocations

§ 97.40 Trading program budget.

In accordance with §§ 97.41 and 97.42, the Administrator will allocate to the NO_x Budget units under § 97.4(a) in a

§ 97.41

State, for each control period specified in § 97.41, a total number of NO_x allowances equal to the trading budget for the State, as set forth in appendix C of this part, less the sum of the NO_x emission limitations (in tons) for each unit exempt under § 97.4(b) that is not allocated any NO_x allowances under § 97.42 (b) or (c) for the control period and whose NO_x emission limitation (in tons of NO_x) is not included in the amount calculated under § 97.42(d)(5)(ii)(B) for the control period.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21646, Apr. 21, 2004]

§ 97.41 Timing requirements for NO_x allowance allocations.

(a) The NO_x allowance allocations, determined in accordance with §§ 97.42(a) through (c), for the control periods in 2004 through 2007 are set forth in appendices A and B of this part.

(b) By April 1, 2005, the Administrator will determine by order the NO_x allowance allocations, in accordance with §§ 97.42 (a) through (c), for the control periods in 2008 through 2012.

(c) By April 1, 2010, by April 1 of 2015, and thereafter by April 1 of the year that is 5 years after the last year for which NO_x allowances allocations are determined, the Administrator will determine by order the NO_x allowance allocations, in accordance with §§ 97.42(a) through (c), for the control periods in the years that are 3, 4, 5, 6, and 7 years after the applicable deadline under this paragraph (c).

(d) By April 1, 2004 and April 1 of each year thereafter, the Administrator will determine by order the NO_x allowance allocations, in accordance with § 97.42(d), for the control period in the year of the applicable deadline under this paragraph (d).

(e) The Administrator will make available to the public each determination of NO_x allowance allocations under paragraph (b), (c), or (d) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.42. Based on any such objections, the Administrator will adjust each determination to the extent necessary to en-

40 CFR Ch. I (7–1–06 Edition)

sure that it is in accordance with § 97.42.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002]

§ 97.42 NO_x allowance allocations.

(a)(1) The heat input (in mmBtu) used for calculating NO_x allowance allocations for each NO_x Budget unit under § 97.4(a) will be:

(i) For a NO_x allowance allocation under § 97.41(a):

(A) For a unit under § 97.4(a)(1), the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1998; or

(B) For a unit under § 97.4(a)(2), the control period in 1995 or, if the Administrator determines that reasonably reliable data are available for control periods in 1996 through 1998, the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1998.

(ii) For a NO_x allowance allocation under § 97.41(b), the unit's average heat input for the control periods in 2002 through 2004.

(iii) For a NO_x allowance allocation under § 97.41(c), the unit's average heat input for the control period in the years that are 4, 5, 6, 7, and 8 years before the first year for which the allocation is being calculated.

(2) The unit's heat input for the control period in each year specified under paragraph (a)(1) of this section will be determined in accordance with part 75 of this chapter. Notwithstanding the first sentence of this paragraph (a)(2):

(i) For a NO_x allowance allocation under § 97.41(a), such heat input will be determined using the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the control period.

(ii) For a NO_x allowance allocation under § 97.41(b) or (c) for a unit exempt under § 97.4(b), such heat input shall be treated as zero if the unit is exempt under § 97.4(b) during the control period.

(b) For each group of control periods specified in § 97.41(a) through (c), the Administrator will allocate to all NO_x Budget units in a given State under § 97.4(a)(1) that commenced operation before May 1, 1997 for allocations under

§ 97.41(a), May 1, 2003 for allocations under § 97.41(b), and May 1 of the year 5 years before the first year for which the allocation under § 97.41(c) is being calculated, a total number of NO_x allowances equal to 95 percent of the portion of the State's trading program budget under § 97.40 covering such units. The Administrator will allocate in accordance with the following procedures:

(1) The Administrator will allocate NO_x allowances to each NO_x Budget unit under § 97.4(a)(1) for each control period in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(2) If the initial total number of NO_x allowances allocated to all NO_x Budget units under § 97.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 95 percent of the portion of the State's trading program budget under § 97.40 covering such units, the Administrator will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period under paragraph (b)(1) of this section so that the total number of NO_x allowances allocated equals 95 percent of such portion of the State's trading program budget. This adjustment will be made by: multiplying each unit's allocation by 95 percent of such portion of the State's trading program budget; dividing by the total number of NO_x allowances allocated under paragraph (b)(1) of this section for the control period; and rounding to the nearest whole number of NO_x allowances as appropriate.

(c) For each group of control periods specified in § 97.41(a) through (c), the Administrator will allocate to all NO_x Budget units in a given State under § 97.4(a)(2) that commenced operation before May 1, 1997 for allocations under § 97.41(a), May 1, 2003 for allocations under § 97.41(b), and May 1 of the year 5 years before the first year for which the allocation under § 97.41(c) is being calculated, a total number of NO_x allowances equal to 95 percent of the portion of the State's trading program budget under § 97.40 covering such

units. The Administrator will allocate in accordance with the following procedures:

(1) The Administrator will allocate NO_x allowances to each NO_x Budget unit under § 97.4(a)(2) for each control period in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(2) If the initial total number of NO_x allowances allocated to all NO_x Budget units under § 97.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 95 percent of the portion of the State's trading program budget under § 97.40 covering such units, the Administrator will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period under paragraph (a)(1) of this section so that the total number of NO_x allowances allocated equals 95 percent of the portion of the State's trading program budget under § 97.40 covering such units. This adjustment will be made by: multiplying each unit's allocation by 95 percent of the portion of the State's trading program budget under § 97.40 covering such units; dividing by the total number of NO_x allowances allocated under paragraph (c)(1) of this section for the control period; and rounding to the nearest whole number of NO_x allowances as appropriate.

(d) For each control period specified in § 97.41(d), the Administrator will allocate NO_x allowances to NO_x Budget units in a given State under § 97.4(a) (except for units exempt under § 97.4(b)) that commence operation, or are projected to commence operation, on or after: May 1, 1997 (for control periods under § 97.41(a)); May 1, 2003, (for control periods under § 97.41(b)); and May 1 of the year 5 years before the beginning of the group of 5 years that includes the control period (for control periods under § 97.41(c)). The Administrator will make the allocations under this paragraph (d) in accordance with the following procedures:

(1) The Administrator will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NO_x allowances equal

to 5 percent of the tons of NO_x emission in the State's trading program budget under § 97.40, rounded to the nearest whole number of NO_x allowances as appropriate.

(2) The NO_x authorized account representative of a NO_x Budget unit specified in this paragraph (d) may submit to the Administrator a request, in a format specified by the Administrator, to be allocated NO_x allowances for the control period. The NO_x allowance allocation request must be received by the Administrator on or after the date on which the State permitting authority issues a permit to construct the unit and by January 1 before the control period for which NO_x allowances are requested.

(3) In a NO_x allowance allocation request under paragraph (d)(2) of this section, the NO_x authorized account representative for a NO_x Budget unit under § 97.4(a)(1) may request for the control period NO_x allowances in an amount that does not exceed the lesser of:

(i) 0.15 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate; or

(ii) The unit's most stringent State or Federal NO_x emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(4) In a NO_x allowance allocation request under paragraph (d)(2) of this section, the NO_x authorized account representative for a NO_x Budget unit under § 97.4(a)(2) may request for the control period NO_x allowances in an amount that does not exceed the lesser of:

(i) 0.17 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate; or

(ii) The unit's most stringent State or Federal NO_x emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

(5) The Administrator will review each NO_x allowance allocation request submitted in accordance with paragraph (d)(2) of this section and will allocate NO_x allowances pursuant to such request as follows:

(i) Upon receipt of the NO_x allowance allocation request, the Administrator will make any necessary adjustments to the request to ensure that the requirements of paragraphs (d) introductory text, (d)(2), (d)(3), and (d)(4) are met.

(ii) The Administrator will determine the following amounts:

(A) The sum of the NO_x allowances requested (as adjusted under paragraph (d)(5)(i) of this section) in all NO_x allowance allocation requests under paragraph (d)(2) of this section for the control period; and

(B) For units exempt under § 97.4(b) in the State that commenced operation, or are projected to commence operation, on or after May 1, 1997 (for control periods under § 97.41(a)); May 1, 2003, (for control periods under § 97.41(b)); and May 1 of the year 5 years before beginning of the group of 5 years that includes the control period (for control periods under § 97.41(c)), the sum of the NO_x emission limitations (in tons of NO_x) on which each unit's exemption under § 97.4(b) is based.

(iii) If the number of NO_x allowances in the allocation set-aside for the control period less the amount under paragraph (d)(5)(ii)(B) of this section is not less than the amount determined under paragraph (d)(5)(ii)(A) of this section, the Administrator will allocate the amount of the NO_x allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NO_x Budget unit for which the allocation request was submitted.

(iv) If the number of NO_x allowances in the allocation set-aside for the control period less the amount under paragraph (d)(5)(ii)(B) of this section is less than the amount determined under paragraph (d)(5)(ii)(A) of this section, the Administrator will allocate, to the NO_x Budget unit for which the allocation request was submitted, the amount of NO_x allowances requested (as adjusted under paragraph (d)(5)(i) of this section) multiplied by the number of NO_x allowances in the allocation set-aside for the control period less the amount determined under paragraph (d)(5)(ii)(B) of this section, divided by the amount determined under paragraph (d)(5)(ii)(A) of this section, and rounded to the nearest whole number of NO_x allowances as appropriate.

(e)(1) For a NO_x Budget unit that is allocated NO_x allowances under paragraph (d) of this section for a control period, the Administrator will deduct NO_x allowances under § 97.54(b), (e), or (f) to account for the actual heat input of the unit during the control period. The Administrator will calculate the number of NO_x allowances to be deducted to account for the unit's actual heat input using the following formulas and rounding to the nearest whole number of NO_x allowance as appropriate, provided that the number of NO_x allowances to be deducted shall be zero if the number calculated is less than zero:

NO_x allowances deducted for actual heat input for a unit under § 97.4(a)(1) = Unit's NO_x allowances allocated for control period – (Unit's actual control period heat input × the lesser of 0.15 lb/mmBtu the unit's most stringent State or Federal emission limitation × 2,000 lb/ton); and NO_x allowances deducted for actual heat input for a unit under § 97.4(a)(2) = Unit's NO_x al-

lowances allocated for control period – (Unit's actual control period heat input × the lesser of 0.17 lb/mmBtu the unit's most stringent State or Federal emission limitation × 2,000 lb/ton)

Where:

“Unit's NO_x allowances allocated for control period” is the number of NO_x allowances allocated to the unit for the control period under paragraph (d) of this section; and

“Unit's actual control period heat input” is the heat input (in mmBtu) of the unit during the control period.

(2) The Administrator will transfer any NO_x allowances deducted under paragraph (e)(1) of this section to the allocation set-aside for the control period for which they were allocated.

(f) After making the deductions for compliance under § 97.54(b), (e), or (f) for a control period, the Administrator will determine whether any NO_x allowances remain in the allocation set-aside for the control period. The Administrator will allocate any such NO_x allowances to the NO_x Budget units in the State using the following formula and rounding to the nearest whole number of NO_x allowances as appropriate:

Unit's share of NO_x allowances remaining in allocation set-aside = Total NO_x allowances remaining in allocation set-aside × (Unit's NO_x allowance allocation ÷ State's trading program budget excluding allocation set-aside)

Where:

“Total NO_x allowances remaining in allocation set-aside” is the total number of NO_x allowances remaining in the allocation set-aside for the control period;

“Unit's NO_x allowance allocation” is the number of NO_x allowances allocated under paragraph (b) or (c) of this section to the unit for the control period to which the allocation set-aside applies; and

“State's trading program budget excluding allocation set-aside” is the State's trading program budget under § 97.40 for the control period to which the allocation set-aside applies multiplied by 95 percent, rounded to the nearest whole number of NO_x allowances as appropriate.

(g) If the Administrator determines that NO_x allowances were allocated under paragraph (b), (c), or (d) of this

section for a control period and the recipient of the allocation is not actually a NO_x Budget unit under § 97.4(a), the Administrator will notify the NO_x authorized account representative and then will act in accordance with the following procedures:

(1)(i) The Administrator will not record such NO_x allowances for the control period in an account under § 97.53;

(ii) If the Administrator already recorded such NO_x allowances for the control period in an account under § 97.53 and if the Administrator makes such determination before making all deductions pursuant to § 97.54 (except deductions pursuant to § 97.54(d)(2)) for the control period, then the Administrator will deduct from the account NO_x allowances equal in number to and allocated for the same or a prior control period as the NO_x allowances allocated to such recipient for the control period. The NO_x authorized account representative shall ensure that the account contains the NO_x allowances necessary for completion of such deduction. If account does not contain the necessary NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in the account; or

(iii) If the Administrator already recorded such NO_x allowances for the control period in an account under § 97.53 and if the Administrator makes such determination after making all deductions pursuant to § 97.54 (except deductions pursuant to § 97.54(d)(2)) for the control period, then the Administrator will apply paragraph (g)(1)(ii) of this section to any subsequent control period for which NO_x allowances were allocated to such recipient.

(2) The Administrator will transfer the NO_x allowances that are not recorded, or that are deducted, pursuant to paragraph (g)(1) of this section to an allocation set-aside for the State in which such source is located.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002; 69 FR 21646, Apr. 21, 2004]

§ 97.43 Compliance Supplement Pool.

(a) For any NO_x Budget unit that reduces its NO_x emission rate in the 2001 through 2003 control period, the owners and operators may request early reduction credits in accordance with the following requirements:

(1) Each NO_x Budget unit for which the owners and operators intend to request, or request, any early reduction credits in accordance with paragraph (a)(4) of this section shall monitor and report NO_x emissions in accordance with subpart H of this part starting in the 2000 control period and for each control period for which such early reduction credits are requested. The unit's percent monitor data availability shall not be less than 90 percent during the 2000 control period, and the unit must be in full compliance with any applicable State or Federal NO_x emission control requirements during 2000 through 2002.

(2) NO_x emission rate and heat input under paragraphs (a)(3) and (4) of this section shall be determined in accordance with subpart H of this part.

(3) Each NO_x Budget unit for which the owners and operators intend to request, or request, any early reduction credits under paragraph (a)(4) of this section shall reduce its NO_x emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NO_x emission rate in the 2000 control period.

(4) The NO_x authorized account representative of a NO_x Budget unit that meets the requirements of paragraphs (a) (1) and (3) of this section may submit to the Administrator a request for early reduction credits for the unit based on NO_x emission rate reductions made by the unit in the control period for 2001 through 2003.

(i) In the early reduction credit request, the NO_x authorized account may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between 0.25 lb/mmBtu and the unit's NO_x emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest whole number of tons.

(ii) The early reduction credit request must be submitted, in a format

specified by the Administrator, by February 1, 2004.

(b) For any NO_x Budget unit that is subject to the Ozone Transport Commission NO_x Budget Program under title I of the Clean Air Act, the owners and operators may request early reduction credits in accordance with the following requirements:

(1) The NO_x authorized account representative of the unit may submit to the Administrator a request for early reduction credits in an amount equal to the amount of banked allowances under the Ozone Transport Commission NO_x Budget Program that were allocated for the control period in 2001 through 2003 and are held by the unit, in accordance with the Ozone Transport Commission NO_x Budget Program, as of the date of submission of the request. During the entire control period in 2001 through 2003 for which the allowances were allocated, the unit must have monitored and reported NO_x emissions in accordance with part 75 (except for subpart H) of this chapter and the Guidance for Implementation of Emission Monitoring Requirements for the NO_x Budget Program (January 28, 1997).

(2) The early reduction credit request under paragraph (b)(1) must be submitted, in a format specified by the Administrator, by February 1, 2004.

(3) The NO_x authorized account representative of the unit shall not submit a request for early reduction credits under paragraph (b)(1) of this section for banked allowances under the Ozone Transport Commission NO_x Budget Program that were allocated for any control period during which the unit made NO_x emission reductions for which he or she submits a request for early reduction credits under paragraph (a) of this section for the unit.

(c) The Administrator will review each early reduction credit request submitted in accordance with paragraph (a) or (b) of this section and will allocate NO_x allowances to NO_x Budget units in a given State and covered by such request as follows:

(1) Upon receipt of each early reduction credit request, the Administrator will make any necessary adjustments to the request to ensure that the amount of the early reduction credits

requested meets the requirements of paragraph (a) or (b) of this section.

(2) After February 1, 2004, the Administrator will make available to the public a statement of the total number of early reduction credits requested by NO_x Budget units in the State.

(3) If the State's compliance supplement pool set forth in appendix D of this part has a number of NO_x allowances not less than the amount of early reduction credits in all early reduction credit requests under paragraph (a) or (b) of this section for 2001 through 2003 (as adjusted under paragraph (c)(1) of this section) submitted by February 1, 2004, the Administrator will allocate to each NO_x Budget unit covered by such requests one allowance for each early reduction credit requested (as adjusted under paragraph (c)(1) of this section).

(4) If the State's compliance supplement pool set forth in appendix D of this part has a smaller number of NO_x allowances than the amount of early reduction credits in all early reduction credit requests under paragraph (a) or (b) of this section for 2001 through 2003 (as adjusted under paragraph (c)(1) of this section) submitted by February 1, 2004, the Administrator will allocate NO_x allowances to each NO_x Budget unit covered by such requests according to the following formula and rounding to the nearest whole number of NO_x allowances as appropriate:

Unit's allocation for early reduction credits = Unit's adjusted early reduction credits × (State's compliance supplement pool ÷ Total adjusted early reduction credits for all units)

Where:

“Unit's allocation for early reduction credits” is the number of NO_x allowances allocated to the unit for early reduction credits.

“Unit's adjusted early reduction credits” is the amount of early reduction credits requested for the unit for 2001 and 2002 in early reduction credit requests under paragraph (a) or (b) of this section, as adjusted under paragraph (c)(1) of this section.

“State's compliance supplement pool” is the number of NO_x allowances in the State's compliance supplement pool set forth in appendix D of this part.

“Total adjusted early reduction credits for all units” is the amount of early reduction credits requested for all units for 2001 and 2002 in early reduction credit requests

§ 97.50

40 CFR Ch. I (7–1–06 Edition)

under paragraph (a) or (b) of this section, as adjusted under paragraph (c)(1) of this section.

(5) By April 1, 2004, the Administrator will determine by order the allocations under paragraph (c)(3) or (4) of this section. The Administrator will make available to the public each determination of NO_x allowance allocations and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with paragraph (c)(1), (3), or (4) of this section. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with paragraph (c)(1), (3), or (4) of this section.

(6) By May 1, 2004, the Administrator will record the allocations under paragraph (c)(3) or (4) of this section.

(7) NO_x allowances recorded under paragraph (c)(6) of this section may be deducted for compliance under § 97.54 for the control period in 2004 or 2005. Notwithstanding § 97.55(a), the Administrator will deduct as retired any NO_x allowance that is recorded under paragraph (c)(6) of this section and that is not deducted for compliance under § 97.54 for the control period in 2003 or 2004.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21529, Apr. 30, 2002; 69 FR 21646, Apr. 21, 2004]

Subpart F—NO_x Allowance Tracking System

§ 97.50 NO_x Allowance Tracking System accounts.

(a) *Nature and function of compliance accounts and overdraft accounts.* Consistent with § 97.51(a), the Administrator will establish one compliance account for each NO_x Budget unit and one overdraft account for each source with two or more NO_x Budget units. Allocations of NO_x allowances pursuant to subpart E of this part or § 97.88, and deductions or transfers of NO_x allowances pursuant to § 97.31, § 96.54, § 96.56, subpart G of this part, or subpart I of this part will be recorded in compliance accounts or overdraft accounts in accordance with this subpart.

(b) *Nature and function of general accounts.* Consistent with § 97.51(b), the Administrator will establish, upon request, a general account for any person. Allocations of NO_x allowances pursuant to § 97.4(b)(4)(ii) or § 97.5(c)(2) and transfers of allowances pursuant to subpart G of this part will be recorded in general accounts in accordance with this subpart.

§ 97.51 Establishment of accounts.

(a) *Compliance accounts and overdraft accounts.* Upon receipt of a complete account certificate of representation under § 97.13, the Administrator will establish:

(1) A compliance account for each NO_x Budget unit for which the account certificate of representation was submitted; and

(2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_x Budget units.

(b) *General accounts.*—(1) *Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring allowances. An application for a general account may designate one and only one NO_x authorized account representative and one and only one alternate NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;

(B) At the option of the NO_x authorized account representative, organization name and type of organization;

(C) A list of all persons subject to a binding agreement for the NO_x authorized account representative and any alternate NO_x authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(D) The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.;"

(E) The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

(ii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of NO_x authorized account representative.* Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind

each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the Administrator or a court regarding the general account.

(iii) Any representation, action, inaction, or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

(iv) Each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorizing account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(v) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in

accordance with paragraph (b)(2)(iv) of this section.

(3) *Changing NO_x authorized account representative and alternate NO_x authorized account representative; changes in persons with ownership interest.* (i) The NO_x authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the NO_x allowances in the general account.

(ii) The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the NO_x allowances in the general account.

(iii)(A) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Administrator, as

if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

(4) *Objections concerning NO_x authorized account representative.* (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternative NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternative NO_x authorized account representative or the finality of any decision or order by the Administrator under the NO_x Budget Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternative NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

Environmental Protection Agency

§ 97.54

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21646, Apr. 21, 2004]

§ 97.52 NO_x Allowance Tracking System responsibilities of NO_x authorized account representative.

(a) Following the establishment of a NO_x Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.

(b) *Authorized account representative identification.* The Administrator will assign a unique identifying number to each NO_x authorized account representative.

§ 97.53 Recordation of NO_x allowance allocations.

(a) The Administrator will record the NO_x allowances for 2004 for a NO_x Budget unit allocated under subpart E of this part in the unit's compliance account, except for NO_x allowances under § 97.4(b)(4)(ii) or § 97.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NO_x allowances for 2004 for a NO_x Budget opt-in unit in the unit's compliance account as allocated under § 97.88(a).

(b) By May 1, 2003, the Administrator will record the NO_x allowances for 2005 for a NO_x Budget unit allocated under subpart E of this part in the unit's compliance account, except for NO_x allowances under § 97.4(b)(4)(ii) or § 97.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NO_x allowances for 2005 for a NO_x Budget opt-in unit in the unit's compliance account as allocated under § 97.88(a).

(c) By May 1, 2003, the Administrator will record the NO_x allowances for 2006 for a NO_x Budget unit allocated under subpart E of this part in the unit's

compliance account, except for NO_x allowances under § 97.4(b)(4)(ii) or § 97.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NO_x allowances for 2006 for a NO_x Budget opt-in unit in the unit's compliance account as allocated under § 97.88(a).

(d) By May 1, 2004, the Administrator will record the NO_x allowances for 2007 for a NO_x Budget unit allocated under subpart E of this part in the unit's compliance account, except for NO_x allowances under § 97.4(b)(4)(ii) or § 97.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NO_x allowances for 2007 for a NO_x Budget opt-in unit in the unit's compliance account as allocated under § 97.88(a).

(e) Each year starting with 2005, after the Administrator has made all deductions from a NO_x Budget unit's compliance account and the overdraft account pursuant to § 97.54 (except deductions pursuant to § 97.54(d)(2)), the Administrator will record:

(1) NO_x allowances, in the compliance account, as allocated to the unit under subpart E of this part for the third year after the year of the control period for which such deductions were or could have been made;

(2) NO_x allowances, in the general account specified by the owners and operators of the unit, as allocated under § 97.4(b)(4)(ii) or § 97.5(c)(2) for the third year after the year of the control period for which such deductions are or could have been made; and

(3) NO_x allowances, in the compliance account, as allocated to the unit under § 97.88(a).

(f) *Serial numbers for allocated NO_x allowances.* When allocating NO_x allowances to a NO_x Budget unit and recording them in an account, the Administrator will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21530, Apr. 30, 2002]

§ 97.54 Compliance.

(a) NO_x allowance transfer deadline. The NO_x allowances are available to be

deducted for compliance with a unit's NO_x Budget emissions limitation for a control period in a given year only if the NO_x allowances:

(1) Were allocated for a control period in a prior year or the same year; and

(2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under § 97.60 by the NO_x allowance transfer deadline for that control period.

(b) *Deductions for compliance.* (1) Following the recordation, in accordance with § 97.61, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for a control period, the Administrator will deduct NO_x allowances available under paragraph (a) of this section to cover the unit's NO_x emissions (as determined in accordance with subpart H of this part), or to account for actual heat input under § 97.42(e), for the control period:

(i) From the compliance account; and

(ii) Only if no more NO_x allowances available under paragraph (a) of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest account number and end with the unit having the compliance account with the highest account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(2) The Administrator will deduct NO_x allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:

(i) Until the number of NO_x allowances deducted for the control period equals the number of tons of NO_x emissions, determined in accordance with

subpart H of this part, from the unit for the control period for which compliance is being determined, plus the number of NO_x allowances required for deduction to account for actual heat input under § 97.42(e) for the control period; or

(ii) Until no more NO_x allowances available under paragraph (a) of this section remain in the respective account.

(c)(1) *Identification of NO_x allowances by serial number.* The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under paragraph (b), (d), (e), or (f) of this section. Such identification shall be made in the compliance certification report submitted in accordance with § 97.30.

(2) *First-in, first-out.* The Administrator will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under paragraph (c)(1) of this section, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those NO_x allowances that were allocated for the control period to the unit under subpart E or I of this part;

(ii) Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation;

(iii) Those NO_x allowances that were allocated for a prior control period to the unit under subpart E or I of this part; and

(iv) Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for a control

period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(2) If the compliance account or overdraft account does not contain sufficient NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NO_x Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(ii) Each ton of excess emissions is a separate violation.

(e) *Deductions for units sharing a common stack.* In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part:

(1) The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with § 97.30.

(2) Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the unit's identified percentage under paragraph (e)(1) of this section or, if no percentage is identified, an equal percentage

for each unit multiplied by the number of tons of NO_x emissions, as determined in accordance with subpart H of this part, from the common stack for the control period for which compliance is being determined. In addition to the deductions under the first sentence of this paragraph (e)(1), the Administrator will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the number of NO_x allowances required to account for actual heat input under § 97.42(e) for the unit for the control period.

(f) *Deduction of banked allowances.* Each year starting in 2006, after the Administrator has completed the designation of banked NO_x allowances under § 97.55(b) and before May 1 of the year, the Administrator will determine the extent to which banked NO_x allowances otherwise available under paragraph (a) of this section are available for compliance in the control period for the current year, as follows. For each State NO_x Budget Trading Program that is established, and approved and administered by the Administrator pursuant to § 51.121 of this chapter, the terms "compliance account" or "compliance accounts", "overdraft account" or "overdraft accounts", "general account" or "general accounts", "States", and "trading program budgets under § 97.40" in paragraphs (f)(1) through (f)(3) of this section shall be read to include respectively: A compliance account or compliance accounts established under such State NO_x Budget Trading Program; an overdraft account or overdraft accounts established under such State NO_x Budget Trading Program; a general account or general accounts established under such State NO_x Budget Trading Program; the State or portion of a State covered by such State NO_x Budget Trading Program; and the trading program budget of the State or portion of a State covered by such State NO_x Budget Trading Program.

(1) The Administrator will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.

§ 97.55

(2) If the total number of banked NO_x allowances determined, under paragraph (f)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10 percent of the sum of the trading program budgets under § 97.40 for all States for the control period, any banked NO_x allowance may be deducted for compliance in accordance with paragraphs (a) through (e) of this section.

(3) If the total number of banked NO_x allowances determined, under paragraph (f)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10 percent of the sum of the trading program budgets under § 97.40 for all States for the control period, any banked allowance may be deducted for compliance in accordance with paragraphs (a) through (e) of this section, except as follows:

(i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the trading program budgets under § 97.40 for all States for the control period and divided by the total number of banked NO_x allowances determined, under paragraph (f)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The Administrator will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined under paragraph (f)(3)(i) of this section. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with paragraphs (a) through (e) of this section. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with paragraphs (a) through (e) of this section, except that, if such NO_x allowances are used to make a deduction under paragraph (b) or (e) of this section, two (rather than one) such NO_x allowances shall authorize up to one ton of NO_x emissions during the control period and must be deducted for each deduction of one NO_x allowance required under paragraph (b) or (e) of this section.

(g) *Recordation of deductions.* The Administrator will record in the appro-

40 CFR Ch. I (7–1–06 Edition)

priate compliance account or overdraft account all deductions from such an account pursuant to paragraph (b), (d), (e), or (f) of this section.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21530, Apr. 30, 2002; 69 FR 21646, Apr. 21, 2004]

§ 97.55 Banking.

NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(a) Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under § 97.31, § 97.54, § 97.56, or subpart G or I of this part.

(b) The Administrator will designate, as a “banked” NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to § 97.54 (except deductions pursuant to § 97.54(d)(2)) and that was allocated for that control period or a control period in a prior year.

§ 97.56 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NO_x authorized account representative for the account.

§ 97.57 Closing of general accounts.

(a) The NO_x authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NO_x Allowance Tracking System and by correctly submitting for recordation under § 97.60 an allowance transfer of all NO_x allowances in the account to one or more other NO_x Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the Administrator may notify

Environmental Protection Agency

§ 97.70

the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Administrator receives a correctly submitted transfer of NO_x allowances into the account under § 97.60 or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart G—NO_x Allowance Transfers

§ 97.60 Submission of NO_x allowance transfers.

The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the Administrator:

- (a) The numbers identifying both the transferor and transferee accounts;
- (b) A specification by serial number of each NO_x allowance to be transferred; and
- (c) The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.

§ 97.61 EPA recordation.

(a) Within 5 business days of receiving a NO_x allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:

- (1) The transfer is correctly submitted under § 97.60; and
 - (2) The transferor account includes each NO_x allowance identified by serial number in the transfer.
- (b) A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for a control period prior to or

the same as the control period to which the NO_x allowance transfer deadline applies will not be recorded until after the Administrator completes the recordation of NO_x allowance allocations under § 97.53 for the control period in the fourth year after the control period to which the NO_x allowance transfer deadline applies.

(c) Where a NO_x allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21647, Apr. 21, 2004]

§ 97.62 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a NO_x allowance transfer under § 97.61, the Administrator will notify the NO_x authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a NO_x allowance transfer that fails to meet the requirements of § 97.61(a), the Administrator will notify the NO_x authorized account representatives of both accounts subject to the transfer of:

- (1) A decision not to record the transfer; and
- (2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a NO_x allowance transfer for recordation following notification of non-recordation.

Subpart H—Monitoring and Reporting

§ 97.70 General requirements.

The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x Budget unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.2 and in § 72.2 of this chapter shall apply, and the terms “affected unit,” “designated representative,”

and “continuous emission monitoring system” (or “CEMS”) in part 75 of this chapter shall be deemed to refer to the terms “NO_x Budget unit,” “NO_x authorized account representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in § 97.2. The owner or operator of a unit that is not a NO_x Budget unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the monitoring, record-keeping, and reporting requirements for a NO_x Budget unit under this part.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each NO_x Budget unit shall meet the following requirements. These provisions shall also apply to a unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, as provided in subpart I of this part:

(1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions. This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input rate, and stack flow rate, in accordance with §§ 75.71 and 75.72 of this chapter.

(2) Install all monitoring systems for monitoring heat input rate.

(3) Successfully complete all certification tests required under § 97.71 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraphs (a)(1) and (2) of this section.

(4) Record, report, and quality-assure the data from the monitoring systems under paragraphs (a)(1) and (2) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the certification and other requirements of paragraphs (a)(1) through (a)(3) of this section on or before the following dates. The owner or operator shall record, report and quality-assure the data from the monitoring systems under paragraphs (a)(1) and (a)(2) of this section on and after the following dates.

(1) For the owner or operator of a NO_x Budget unit for which the owner or operator intends to apply for early reduction credits under § 97.43, by May

1, 2001. If the owner or operator of a NO_x Budget unit fails to meet this deadline, he or she is not eligible to apply for early reduction credits and is subject to the deadline under paragraph (b)(2) of this section.

(2) For the owner or operator of a NO_x Budget unit under § 97.4(a) that commences operation before January 1, 2003 and that is not subject to or does not meet the deadline under paragraph (b)(1) of this section, by May 1, 2003.

(3) For the owner or operator of a NO_x Budget unit under § 97.4(a) that commences operation on or after January 1, 2003 and that reports on an annual basis under § 97.74(d) by the following dates:

(i) The earlier of 90 unit operating days after the date on which the unit commences commercial operation or 180 calendar days after the date on which the unit commences commercial operation; or

(ii) May 1, 2003, if the compliance date under paragraph (b)(3)(i) of this section is before May 1, 2003.

(4) For the owner or operator of a NO_x Budget unit under § 97.4(a) that commences operation on or after January 1, 2003 and that reports on a control period basis under § 97.74(d)(2)(ii), by the following dates:

(i) The earlier of 90 unit operating days or 180 calendar days after the date on which the unit commences commercial operation, if this compliance date is during a control period; or

(ii) May 1 immediately following the compliance date under paragraph (b)(4)(i) of this section, if such compliance date is not during a control period.

(5) For the owner or operator of a NO_x Budget unit that has a new stack or flue or add-on NO_x emission controls for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section or under subpart I of this part and that reports on an annual basis under § 97.74(d), by the earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emission controls.

(6) For the owner or operator of a NO_x Budget unit that has a new stack

or flue or add-on NO_x emission controls for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section or under subpart I of this part and that reports on a control period basis under § 97.74(d)(2)(ii), by the following dates:

(i) The earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emission controls, if this compliance date is during a control period; or

(ii) May 1 immediately following the compliance date under paragraph (b)(6)(i) of this section, if such compliance date is not during a control period.

(7) For the owner or operator of a unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, by the date specified under subpart I of this part.

(c) *Commencement of data reporting.* (1) The owner or operator of NO_x Budget units under paragraph (b)(1) or (b)(2) of this section shall determine, record and report NO_x mass emissions, heat input rate, and any other values required to determine NO_x mass emissions (e.g., NO_x emission rate and heat input rate, or NO_x concentration and stack flow rate) in accordance with § 75.70(g) of this chapter, beginning on the first hour of the applicable compliance deadline in paragraph (b)(1) or (b)(2) of this section.

(2) The owner or operator of a NO_x Budget unit under paragraph (b)(3) or (b)(4) of this section shall determine, record and report NO_x mass emissions, heat input rate, and any other values required to determine NO_x mass emissions (e.g., NO_x emission rate and heat input rate, or NO_x concentration and stack flow rate) and electric and thermal output in accordance with § 75.70(g) of this chapter, beginning on:

(i) The date and hour on which the unit commences operation, if the date and hour on which the unit commences operation is during a control period; or

(ii) The first hour on May 1 of the first control period after the date and hour on which the unit commences operation, if the date and hour on which

the unit commences operation is not during a control period.

(3) Notwithstanding paragraphs (c)(2)(i) and (c)(2)(ii) of this section, the owner or operator may begin reporting NO_x mass emission data and heat input data before the date and hour under paragraph (c)(2)(i) or (c)(2)(ii) of this section if the unit reports on an annual basis and if the required monitoring systems are certified before the applicable date and hour under paragraph (c)(1) or (c)(2) of this section.

(d) *Prohibitions.* (1) No owner or operator of a NO_x Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 97.75.

(2) No owner or operator of a NO_x Budget unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter, except as provided in § 75.74 of this chapter.

(3) No owner or operator of a NO_x Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter or except as provided in § 75.74 of this chapter.

(4) No owner or operator of a NO_x Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.4(b) or § 97.5 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.71(b)(2).

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21530, Apr. 30, 2002; 69 FR 21647, Apr. 21, 2004]

§ 97.71 Initial certification and recertification procedures.

(a) The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of part 75 of this chapter for NO_x-diluent CEMS, flow monitors, NO_x concentration CEMS, or excepted monitoring systems under appendix E of part 75 of this chapter for NO_x, under appendix D for heat input, or under § 75.19 for NO_x and heat input, except that:

(1) If, prior to January 1, 1998, the Administrator approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.17 of this chapter, the NO_x authorized account representative shall resubmit the petition to the Administrator under § 97.75(a) to determine if the approval applies under the NO_x Budget Trading Program.

(2) For any additional CEMS required under the common stack provisions in § 75.72 of this chapter or for any NO_x concentration CEMS used under the provisions of § 75.71(a)(2) of this chapter, the owner or operator shall meet the requirements of paragraph (b) of this section.

(b) The owner or operator of a NO_x Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial cer-

tification and recertification procedures. The owner or operator of such a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the following procedures, as modified by paragraph (c) or (d) of this section. The owner or operator of a NO_x Budget unit that is subject to an Acid Rain emissions limitation and that requires additional CEMS under the common stack provisions in § 75.72 of this chapter or uses a NO_x concentration CEMS under § 75.71(a)(2) of this chapter shall comply with the following procedures.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each emission monitoring system required by subpart H of part 75 of this chapter (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.70(b). In addition, whenever the owner or operator installs an emission monitoring system in order to meet the requirements of this part in a location where no such emission monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in a certified emission monitoring system that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the emission monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system in accordance with § 75.20(b) of this

chapter. Examples of changes that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

(3) *Certification approval process for initial certification and recertification*—(i) *Notification of certification.* The NO_x authorized account representative shall submit to the Administrator, the appropriate EPA Regional Office and the permitting authority written notice of the dates of certification in accordance with §97.73.

(ii) *Certification application.* The NO_x authorized account representative shall submit to the Administrator, the appropriate EPA Regional Office and the permitting authority a certification application for each emission monitoring system required under subpart H of part 75 of this chapter. A complete certification application shall include the information specified in subpart H of part 75 of this chapter.

(iii) Except for units using the low mass emission excepted methodology under §75.19 of this chapter, the provisional certification date for a monitor shall be determined in accordance with §75.20(a)(3) of this chapter. A provisionally certified monitor may be used under the NO_x Budget Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (b)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the Administrator.

(iv) *Certification application formal approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete cer-

tification application under paragraph (b)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the NO_x Budget Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(3)(ii) of this section has been received by the Administrator. If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative must submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (b)(3)(iv)(C) of this section. The 120-day review period shall not begin prior to receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(3)(iv)(B) of this section has been met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid

quality-assured data beginning with the date and hour of provisional certification (as defined under §75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (b)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with §97.72(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (b)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (b)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under §75.20(a)(4)(iii), §75.20(b)(5), §75.20(h)(4), or §75.21(e) and continuing until the date and hour specified under §75.20(a)(5)(i) of this chapter:

(1) For units that the owner or operator intends to monitor or monitors for NO_x emission rate and heat input rate or intends to determine or determines NO_x mass emissions using the low mass emission excepted methodology under §75.19 of this chapter, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit; and

(2) For units that the owner or operator intends to monitor or monitors for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the unit under section 2 of appendix A of part 75 of this chapter.

(B) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (b)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days

after the date of issuance of the notice of disapproval.

(c) *Initial certification and recertification procedures for low mass emission units using the excepted methodologies under §75.19 of this chapter.* The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under §75.19 of this chapter and not subject to an Acid Rain emissions limitation shall meet the applicable general operating requirements of §75.10 of this chapter and the applicable requirements of §75.19 of this chapter. The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of paragraph (b) of this section, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget Trading Program as of the date on which a complete certification application is received by the Administrator. The methodology shall be considered to be certified either upon receipt of a written notice of approval from the Administrator or, if such notice is not provided, at the end of the Administrator's 120 day review period. However, a provisionally certified or certified low mass emissions excepted methodology shall not be used to report data under the NO_x Budget Trading Program prior to the applicable commencement date specified in §75.19(a)(1)(ii) of this chapter.

(d) *Certification/recertification procedures for alternative monitoring systems.* The NO_x authorized account representative of each unit not subject to an Acid Rain emissions limitation for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable certification procedures of paragraph (b) of this section before using the system under the NO_x Budget Trading Program. The NO_x authorized account representative shall also comply with the applicable recertification procedures of paragraph (b) of this section. Section 75.20(f) of this chapter shall apply to such alternative monitoring system.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21647, Apr. 21, 2004]

§ 97.72 Out of control periods.

(a) Whenever any emission monitoring system fails to meet the quality assurance or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D, subpart H, appendix D, or appendix E of part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of an emission monitoring system and a review of the initial certification or recertification application reveal that any system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.71 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the system. The data measured and recorded by the system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the system. The owner or operator shall follow the initial certification or recertification procedures in § 97.71 for each disapproved system.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21648, Apr. 21, 2004]

§ 97.73 Notifications.

(a) The NO_x authorized account representative for a NO_x Budget unit shall submit written notice to the Administrator, the appropriate EPA Regional Office, and the permitting authority in accordance with § 75.61 of this chapter.

(b) For any unit that does not have an Acid Rain emissions limitation, the permitting authority may waive the

requirement to notify the permitting authority in paragraph (a) of this section.

§ 97.74 Recordkeeping and reporting.

(a) *General provisions.* (1) The NO_x authorized account representative shall comply with all recordkeeping and reporting requirements in this section, with the recordkeeping and reporting requirements under § 75.73 of this chapter, and with the requirements of § 97.10(e)(1).

(2) If the NO_x authorized account representative for a NO_x Budget unit subject to an Acid Rain emission limitation who signed and certified any submission that is made under subpart F or G of part 75 of this chapter and that includes data and information required under this subpart or subpart H of part 75 of this chapter is not the same person as the designated representative or the alternative designated representative for the unit under part 72 of this chapter, then the submission must also be signed by the designated representative or the alternative designated representative.

(b) *Monitoring plans.* (1) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of § 75.62 of this chapter, except that the monitoring plan shall also include all of the information required by subpart H of part 75 of this chapter.

(2) The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of § 75.62 of this chapter, except that the monitoring plan is only required to include the information required by subpart H of part 75 of this chapter.

(c) *Certification applications.* The NO_x authorized account representative shall submit an application to the Administrator, the appropriate EPA Regional Office, and the permitting authority within 45 days after completing all initial certification or recertification tests required under § 97.71 including the information required under subpart H of part 75 of this chapter.

(d) *Quarterly reports.* The NO_x authorized account representative shall submit quarterly reports, as follows:

(1) If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NO_x budget unit chooses to meet the annual reporting requirements of this subpart H, the NO_x authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) For a unit for which the owner or operator intends to apply or applies for the early reduction credits under § 97.43, the calendar quarter that covers May 1, 2000 through June 30, 2000. The NO_x mass emission data shall be recorded and reported from the first hour on May 1, 2000; or

(ii) For a unit that commences operation before January 1, 2003 and that is not subject to paragraph (d)(1)(i) of this section, the calendar quarter covering May 1, 2003 through June 30, 2003. The NO_x mass emission data shall be recorded and reported from the first hour on May 1, 2003; or

(iii) For a unit that commences operation on or after January 1, 2003:

(A) The calendar quarter in which the unit commences operation, if unit operation commences during a control period. The NO_x mass emission data shall be recorded and reported from the date and hour when the unit commences operation; or

(B) The calendar quarter which includes May 1 through June 30 of the first control period following the date on which the unit commences operation, if the unit does not commence operation during a control period. The NO_x mass emission data shall be recorded and reported from the first hour on May 1 of that control period; or

(iv) A calendar quarter before the quarter specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii)(B) of this section, if the owner or operator elects to begin reporting early under § 97.70(c)(3).

(2) If a NO_x budget unit is not subject to an Acid Rain emission limitation, then the NO_x authorized account representative shall either:

(i) Meet all of the requirements of part 75 related to monitoring and reporting NO_x mass emissions during the entire year and meet the deadlines specified in paragraph (d)(1) of this section; or

(ii) Submit quarterly reports, documenting NO_x mass emissions from the

unit, only for the period from May 1 through September 30 of each year and including the data described in § 75.74(c)(6) of this chapter. The NO_x authorized account representative shall submit such quarterly reports, beginning with:

(A) For a unit for which the owner or operator intends to apply or applies for the early reduction credits under § 97.43, the calendar quarter that covers May 1, 2000 through June 30, 2000. The NO_x mass emission data shall be recorded and reported from the first hour on May 1, 2000; or

(B) For a unit that commences operation before January 1, 2003 and that is not subject to paragraph (d)(2)(ii)(A) of this section, the calendar quarter covering May 1, 2003 through June 30, 2003. The NO_x mass emission data shall be recorded and reported from the first hour on May 1, 2003; or

(C) For a unit that commences operation on or after January 1, 2003 and during a control period, the calendar quarter in which the unit commences operation. The NO_x mass emission data shall be recorded and reported from the date and hour when the unit commences operation; or

(D) For a unit that commences operation on or after January 1, 2003 and not during a control period, the calendar quarter which includes May 1 through June 30 of the first control period following the date on which the unit commences operation. The NO_x mass emission data shall be recorded and reported from the first hour on May 1 of that control period.

(3) The NO_x authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of part 75 of this chapter and § 75.64 of this chapter.

(i) For units subject to an Acid Rain emissions limitation, quarterly reports shall include all of the data and information required in subpart H of part 75 of this chapter for each NO_x Budget unit (or group of units using a common stack) and the data and information required in subpart G of part 75 of this chapter.

(ii) For units not subject to an Acid Rain emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of part 75 of this chapter for each NO_x Budget unit (or group of units using a common stack).

(4) *Compliance certification.* The NO_x authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;

(ii) For a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B of part 75 of this chapter and the substitute values do not systematically underestimate NO_x emissions; and

(iii) For a unit that is reporting on a control period basis under paragraph (d)(2)(ii) of this section, the NO_x emission rate and NO_x concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

[65 FR 2727, Jan. 18, 2000, as amended at 67 FR 21530, Apr. 30, 2002; 69 FR 21648, Apr. 21, 2004]

§ 97.75 Petitions.

(a) The NO_x authorized account representative of a NO_x Budget unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart.

(b) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is ap-

proved by the Administrator under § 75.66 of this chapter.

§ 97.76 Additional requirements to provide heat input data.

The owner or operator of a NO_x Budget unit that monitors and reports NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart I—Individual Unit Opt-ins.

§ 97.80 Applicability.

A unit that is in a State (as defined in § 97.2), is not a NO_x Budget unit under § 97.4(a), is not a unit exempt under § 97.4(b), vents all of its emissions to a stack, and is operating, may qualify to be a NO_x Budget opt-in unit under this subpart. A unit that is a NO_x Budget unit under § 97.4(a), is covered by an exemption under § 97.4(b) or § 97.5 that is in effect, or is not operating is not eligible to be a NO_x Budget opt-in unit.

§ 97.81 General.

Except otherwise as provided in this part, a NO_x Budget opt-in unit shall be treated as a NO_x Budget unit for purposes of applying subparts A through H of this part.

§ 97.82 NO_x authorized account representative.

A unit for which an application for a NO_x Budget opt-in permit is submitted, or a NO_x Budget opt-in unit, located at the same source as one or more NO_x Budget units, shall have the same NO_x authorized account representative as such NO_x Budget units.

§ 97.83 Applying for NO_x Budget opt-in permit.

(a) *Applying for initial NO_x Budget opt-in permit.* In order to apply for an initial NO_x Budget opt-in permit, the NO_x authorized account representative of a unit qualified under § 97.80 may submit to the Administrator and the permitting authority at any time, except as provided under § 97.86(g):

(1) A complete NO_x Budget permit application under § 97.22;

§ 97.84

40 CFR Ch. I (7–1–06 Edition)

(2) A monitoring plan submitted in accordance with subpart H of this part; and

(3) A complete account certificate of representation under § 97.13, if no NO_x authorized account representative has been previously designated for the unit.

(b) *Duty to reapply.* Unless the NO_x Budget opt-in permit is terminated or revised under § 97.86(e) or § 97.87(b)(1)(i), the NO_x authorized account representative of a NO_x Budget opt-in unit shall submit to the Administrator and permitting authority a complete NO_x Budget permit application under § 97.22 to renew the NO_x Budget opt-in permit in accordance with § 97.21(c) and, if applicable, an updated monitoring plan in accordance with subpart H of this part.

§ 97.84 Opt-in process.

The permitting authority will issue or deny an initial NO_x Budget opt-in permit for a unit for which an application for a NO_x Budget opt-in permit under § 97.83 is submitted, in accordance with § 97.20 and the following:

(a) *Interim review of monitoring plan.* The Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x Budget opt-in permit under § 97.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input rate of the unit are monitored and reported in accordance with subpart H of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(b) If the Administrator determines that the unit's monitoring plan is sufficient under paragraph (a) of this section and after completion of monitoring system certification under subpart H of this part, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with subpart H of this part for one full control period during which percent monitor data availability is not less than 90 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions-related require-

ments. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a "NO_x Budget unit" prior to issuance of a NO_x Budget opt-in permit covering the unit.

(c) Based on the information monitored and reported under paragraph (b) of this section, the Administrator will calculate the unit's baseline heat input, which will equal the unit's total heat input (in mmBtu) for the control period, and the unit's baseline NO_x emissions rate, which will equal the unit's total NO_x mass emissions (in lb) for the control period divided by the unit's baseline heat input.

(d) *Issuance of draft NO_x Budget opt-in permit for public comment.* The permitting authority will issue a draft NO_x Budget opt-in permit for public comment in accordance with § 97.20.

(e) Notwithstanding paragraphs (a) through (d) of this section, if at any time before issuance of a draft NO_x Budget opt-in permit for public comment for the unit, the Administrator or the permitting authority determines that the unit does not qualify as a NO_x Budget opt-in unit under § 97.80, the permitting authority will issue a draft denial of a NO_x Budget opt-in permit for public comment for the unit in accordance with § 97.20.

(f) *Withdrawal of application for NO_x Budget opt-in permit.* A NO_x authorized account representative of a unit may withdraw its application for an initial NO_x Budget opt-in permit under § 97.83 at any time prior to the issuance of the initial NO_x Budget opt-in permit. Once the application for a NO_x Budget opt-in permit is withdrawn, a NO_x authorized account representative wanting to re-apply must submit a new application for an initial NO_x Budget permit under § 97.83.

(g) The unit shall be a NO_x Budget opt-in unit and a NO_x Budget unit starting May 1 of the first control period starting after the issuance of the initial NO_x Budget opt-in permit by the permitting authority.

§ 97.85 NO_x Budget opt-in permit contents.

(a) Each NO_x Budget opt-in permit will contain all elements required for a complete NO_x Budget opt-in permit application under § 97.22.

(b) Each NO_x Budget opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.2 and, upon recordation by the Administrator under subpart F or G of this part, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x Budget opt-in unit covered by the NO_x Budget opt-in permit or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in unit is located.

§ 97.86 Withdrawal from NO_x Budget Trading Program.

(a) *Requesting withdrawal.* To withdraw from the NO_x Budget Trading Program, the NO_x authorized account representative of a NO_x Budget opt-in unit shall submit to the Administrator and the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a NO_x Budget opt-in unit covered by a request under paragraph (a) of this section may withdraw from the NO_x Budget Trading Program and the NO_x Budget opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period immediately before the withdrawal is to be effective, the NO_x authorized account representative must submit or must have submitted to the Administrator and the permitting authority an annual compliance certification report in accordance with § 97.30.

(2) If the NO_x Budget opt-in unit has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted from the NO_x Budget opt-in unit's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in unit is located, the full amount required under § 97.54(d) for the control period.

(3) After the requirements for withdrawal under paragraphs (b)(1) and (2) of this section are met, the Administrator will deduct from the NO_x Budget opt-in unit's compliance account, or

the overdraft account of the NO_x Budget source where the NO_x Budget opt-in unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to that source under § 97.88 for any control period for which the withdrawal is to be effective. The Administrator will close the NO_x Budget opt-in unit's compliance account and transfer any remaining allowances to a general account specified by the owners and operators of the NO_x Budget opt-in unit.

(c) A NO_x Budget opt-in unit that withdraws from the NO_x Budget Trading Program shall comply with all requirements under the NO_x Budget Trading Program concerning all years for which such NO_x Budget opt-in unit was a NO_x Budget opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(d) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of NO_x allowances required), the Administrator will issue a notification to the permitting authority and the NO_x authorized account representative of the NO_x Budget opt-in unit of the acceptance of the withdrawal of the NO_x Budget opt-in unit as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the Administrator will issue a notification to the permitting authority and the NO_x authorized account representative of the NO_x Budget opt-in unit that the request to withdraw is denied. If the NO_x Budget opt-in unit's request to withdraw is denied, the NO_x Budget opt-in unit shall remain subject to the requirements for a NO_x Budget opt-in unit.

(e) *Permit revision.* After the Administrator issues a notification under paragraph (d)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the NO_x Budget permit covering the NO_x Budget opt-in unit to terminate the NO_x Budget opt-in permit as

of the effective date specified under paragraph (d)(1) of this section. A NO_x Budget opt-in unit shall continue to be a NO_x Budget opt-in unit until the effective date of the termination.

(f) *Reapplication upon failure to meet conditions of withdrawal.* If the Administrator denies the request to withdraw the NO_x Budget opt-in unit, the NO_x authorized account representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(g) *Ability to return to the NO_x Budget Trading Program.* Once a NO_x Budget opt-in unit withdraws from the NO_x Budget Trading Program and its NO_x Budget opt-in permit is terminated under paragraph (e) of this section, the NO_x authorized account representative may not submit another application for a NO_x Budget opt-in permit under § 97.83 for the unit prior to the date that is 4 years after the date on which the terminated NO_x Budget opt-in permit became effective.

§ 97.87 Change in regulatory status.

(a) *Notification.* When a NO_x Budget opt-in unit becomes a NO_x Budget unit under § 97.4(a), the NO_x authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the NO_x Budget opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's action.* (1)(i) When the NO_x Budget opt-in unit becomes a NO_x Budget unit under § 97.4(a), the permitting authority will revise the NO_x Budget opt-in unit's NO_x Budget opt-in permit to meet the requirements of a NO_x Budget permit under § 97.23 as of an effective date that is the date on which such NO_x Budget opt-in unit becomes a NO_x Budget unit under § 97.4(a).

(ii)(A) The Administrator will deduct from the compliance account for the NO_x Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NO_x Budget source where the unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as:

(1) Any NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt-in unit) under § 97.88 for any control period after the last control period during which the unit's NO_x Budget opt-in permit was effective; and

(2) If the effective date of the NO_x Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt-in unit) under § 97.88 for the control period multiplied by the number of days in the control period starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period, and rounded to the nearest whole number of NO_x allowances as appropriate.

(B) The NO_x authorized account representative shall ensure that the compliance account of the NO_x Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NO_x Budget source where the unit is located, contains the NO_x allowances necessary for completion of the deduction under paragraph (b)(1)(ii)(A) of this section. If the compliance account or overdraft account does not contain the necessary NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(iii)(A) For every control period during which the NO_x Budget permit revised under paragraph (b)(1)(i) of this section is in effect, the NO_x Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of NO_x allowance allocations under § 97.42, as a unit that commenced operation on the effective date of the NO_x Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated NO_x allowances under § 97.42. The unit's deadline under § 97.84(b) for meeting monitoring requirements in accordance with subpart H of this part shall not be changed by the change in the unit's regulatory status or by the revision of the NO_x Budget permit under paragraph (b)(1)(i) of this section.

(B) Notwithstanding paragraph (b)(1)(iii)(A) of this section, if the effective date of the NO_x Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of NO_x allowances will be allocated to the NO_x Budget unit under paragraph (b)(1)(i) of this section under § 97.42 for the control period: the number of NO_x allowances otherwise allocated to the NO_x Budget unit under § 97.42 for the control period multiplied by the number of days in the control period starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period, and rounded to the nearest whole number of NO_x allowances as appropriate.

(2)(i) When the NO_x authorized account representative of a NO_x Budget opt-in unit does not renew its NO_x Budget opt-in permit under § 97.83(b), the Administrator will deduct from the NO_x Budget opt-in unit's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to the NO_x Budget opt-in unit under § 97.88 for any control period after the last control period for which the NO_x Budget opt-in permit is effective. The NO_x authorized account representative shall ensure that the NO_x Budget opt-in unit's compliance account or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in unit is located contains the NO_x allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain the necessary NO_x allowances, the Administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

(ii) After the deduction under paragraph (b)(2)(i) of this section is completed, the Administrator will close the NO_x Budget opt-in unit's compliance account. If any NO_x allowances remain in the compliance account after completion of such deduction and any deduction under § 97.54, the Adminis-

trator will close the NO_x Budget opt-in unit's compliance account and transfer any remaining allowances to a general account specified by the owners and operators of the NO_x Budget opt-in unit.

[65 FR 2727, Jan. 18, 2000, as amended at 69 FR 21648, Apr. 21, 2004]

§ 97.88 NO_x allowance allocations to opt-in units.

(a) *NO_x allotment allocation.* (1) By April 1 immediately before the first control period for which the NO_x Budget opt-in permit is effective, the Administrator will determine by order the NO_x allowance allocations for the NO_x Budget opt-in unit for the control period in accordance with paragraph (b) of this section.

(2) By no later than April 1, after the first control period for which the NO_x Budget opt-in permit is in effect, and April 1 of each year thereafter, the Administrator will determine by order the NO_x allowance allocations for the NO_x Budget opt-in unit for the next control period, in accordance with paragraph (b) of this section.

(3) The Administrator will make available to the public each determination of NO_x allowance allocations under paragraph (a)(1) or (2) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with paragraph (b) of this section. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with paragraph (b) of this section.

(b) For each control period for which the NO_x Budget opt-in unit has an approved NO_x Budget opt-in permit, the NO_x Budget opt-in unit will be allocated NO_x allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating NO_x allowance allocations will be the lesser of:

(i) The unit's baseline heat input determined pursuant to § 97.84(c); or

(ii) The unit's heat input, as determined in accordance with subpart H of this part, for the control period in the

year prior to the year of the control period for which the NO_x allocations are being calculated.

(2) The Administrator will allocate NO_x allowances to the unit in an amount equaling the heat input determined under paragraph (b)(1) of this section multiplied by the lesser of the unit's baseline NO_x emissions rate determined under § 97.84(c) or the most stringent State or federal NO_x emissions limitation applicable to the unit during the control period, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

Subpart J—Appeal Procedures

§ 97.90 Appeal procedures.

The appeal procedures for the NO_x Budget Trading Program are set forth in part 78 of this chapter.

[69 FR 21648, Apr. 21, 2004]

Subpart AA—CAIR NO_x Annual Trading Program General Provisions

§ 97.101 Purpose.

This subpart and subparts BB through II set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) NO_x Annual Trading Program, under section 110 of the Clean Air Act and § 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

§ 97.102 Definitions.

The terms used in this subpart and subparts BB through II shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_x Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission re-

duction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Actual weighted average NO_x emission rate means, for a NO_x averaging plan under § 76.11 of this chapter and for a year:

(1) The sum of the products of the actual annual average NO_x emission rate and actual annual heat input (as determined in accordance with part 75 of this chapter) for all units in the NO_x averaging plan for the year; divided by

(2) The sum of the actual annual heat input (as determined in accordance with part 75 of this chapter) for all units in the NO_x averaging plan for the year.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to CAIR NO_x allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO_x allowances to be initially credited to a CAIR NO_x unit, a new unit set-aside, or other entity.

Allowance transfer deadline means, for a control period, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a CAIR NO_x allowance transfer must be submitted for recordation in a CAIR NO_x source's compliance account in order to be used to meet the source's CAIR NO_x emissions limitation for such control period in accordance with § 97.154.

Alternate CAIR designated representative means, for a CAIR NO_x source and each CAIR NO_x unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BB and II of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Annual Trading Program. If the CAIR NO_x source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x

source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_x source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or *DAHS* means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BB, FF, and II of this part, to transfer and otherwise dispose of CAIR NO_x allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_x source and each CAIR NO_x unit at the source, the natural person who is authorized by the owners

and operators of the source and all such units at the source, in accordance with subparts BB and II of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Annual Trading Program. If the CAIR NO_x source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_x source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

CAIR NO_x allowance means a limited authorization issued by a permitting authority or the Administrator under subpart EE of this part or § 97.188, or under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Program. An authorization to emit nitrogen oxides that is not issued under subpart EE of this part, § 97.188, or provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2) or (p) of this chapter shall not be a CAIR NO_x allowance.

CAIR NO_x allowance deduction or deduct CAIR NO_x allowances means the permanent withdrawal of CAIR NO_x allowances by the Administrator from a compliance account, *e.g.*, in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x units at a CAIR NO_x source for a control period, determined in accordance with subpart HH of this part, or to account for excess emissions.

CAIR NO_x Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_x allowances under the CAIR NO_x Annual Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_x Allowance Tracking System account means an account in the CAIR NO_x Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_x allowances.

CAIR NO_x allowances held or hold *CAIR NO_x allowances* means the CAIR NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FF, GG, and II of this part, in a CAIR NO_x Allowance Tracking System account.

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of this part and §§ 51.123(p) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and § 51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x emissions limitation means, for a CAIR NO_x source, the tonnage equivalent, in NO_x emissions in a control period, of the CAIR NO_x allowances available for deduction for the source under § 97.154 (a) and (b) for the control period.

CAIR NO_x Ozone Season source means a source that is subject to the CAIR NO_x Ozone Season Trading Program.

CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and §§ 51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with under subparts AAAA through IIII and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of

mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x source means a source that includes one or more CAIR NO_x units.

CAIR NO_x unit means a unit that is subject to the CAIR NO_x Annual Trading Program under § 97.104 and, except for purposes of § 97.105 and subpart EE of this part, a CAIR NO_x opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CC of this part, including any permit revisions, specifying the CAIR NO_x Annual Trading Program requirements applicable to a CAIR NO_x source, to each CAIR NO_x unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO₂ source means a source that is subject to the CAIR SO₂ Trading Program.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and §§ 51.124(r) and 52.36 of this chapter or approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

Certifying official means:

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Environmental Protection Agency

§ 97.102

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means:

(1) Except for purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

(2) For purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit, (A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat

recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 97.105 and § 97.184(h).

(i) For a unit that is a CAIR NO_x unit under § 97.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO_x unit under § 97.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.105, for a unit that is not a CAIR NO_x unit under § 97.104 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x unit under § 97.104.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as

defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 97.184(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (*e.g.*, repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 97.184(h).

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_x Allowance Tracking System account, established by the Administrator for a CAIR NO_x source under subpart FF or II of this part, in which any CAIR NO_x allowance allocations for the CAIR NO_x units at the source are initially recorded and in which are held any CAIR NO_x allowances available for use for a control period in order to meet the source's CAIR NO_x emissions limitation in accordance with § 97.154.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HH of this part to sample, analyze, measure, and provide, by

means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂, and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;

(5) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and

(6) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a

permanent, continuous record of O₂, in percent O₂.

Control period means the period beginning January 1 of a calendar year, except as provided in § 97.106(c)(2), and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_x units at a CAIR NO_x source during a control period that exceeds the CAIR NO_x emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_x Allowance Tracking System account, established under subpart FF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated rep-

resentative and determined by the Administrator in accordance with subpart HH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_x emissions limitation means, with regard to a unit, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

Oil-fired means, for purposes of subpart EE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

Operator means any person who operates, controls, or supervises a CAIR NO_x unit or a CAIR NO_x source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR NO_x source or a CAIR NO_x unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR NO_x unit at the source or the CAIR NO_x unit;

(ii) Any holder of a leasehold interest in a CAIR NO_x unit at the source or the CAIR NO_x unit; or

(iii) Any purchaser of power from a CAIR NO_x unit at the source or the CAIR NO_x unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_x unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_x allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_x Annual Trading Program in accordance with subpart CC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to CAIR NO_x allowances, the movement of CAIR NO_x allowances by the Administrator into or between CAIR NO_x Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, replace, or replaced means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

- (1) Atmospheric or pressurized fluidized bed combustion;
- (2) Integrated gasification combined cycle;
- (3) Magnetohydrodynamics;
- (4) Direct and indirect coal-fired turbines;
- (5) Integrated gasification fuel cells; or
- (6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Sequential use of energy means:

- (1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or
- (2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Serial number means, for a CAIR NO_x allowance, the unique identification number assigned to each CAIR NO_x allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a "solid waste incineration unit" as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that is subject to the CAIR NO_x Annual Trading Program pursuant to § 52.35 of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_x emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (*e.g.*, space heating or domestic hot water heating); or

(3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 97.103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BB through II are defined as follows:

Btu—British thermal unit
CO₂—carbon dioxide
H₂O—water
Hg—mercury
hr—hour
kW—kilowatt electrical
kWh—kilowatt hour

lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
NO_x—nitrogen oxides
O₂—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO₂—sulfur dioxide
yr—year

§ 97.104 Applicability

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_x units, and any source that includes one or more such units shall be a CAIR NO_x source, subject to the requirements of this subpart and subparts BB through HH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_x unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_x units:

(1)(i) Any unit that is a CAIR NO_x unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of

the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR NO_x unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_x unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first

3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_x Annual Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: "I am authorized to make this submission on behalf of the owners and operators of the unit for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division (or its successor), U.S. Environmental Protection Agency, who will act on the petition as the Administrator's duly authorized representative.

(3) *Response.* The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator's determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_x Annual Trading Program to the unit shall be binding on the permitting authority unless the petition or

other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

§ 97.105 Retired unit exemption.

(a)(1) Any CAIR NO_x unit that is permanently retired and is not a CAIR NO_x opt-in unit under subpart II of this part shall be exempt from the CAIR NO_x Annual Trading Program, except for the provisions of this section, §§ 97.102, 97.103, 97.104, 97.106(c)(4) through (7), 97.107, 97.108, and subparts BB and EE through GG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_x unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The Administrator or the permitting authority will allocate CAIR NO_x allowances under subpart EE of this part to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records

may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_x Annual Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 97.122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.106 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO_x source required to have a title V operating permit and each CAIR NO_x unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.122 in accordance with the deadlines specified in § 97.121; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_x source required to have a title V operating permit and each CAIR NO_x unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart II of this part, the owners and operators of a CAIR NO_x source that is not otherwise required to have a title V operating permit and each CAIR NO_x unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CC of this part for such CAIR NO_x source and such CAIR NO_x unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_x source and each CAIR NO_x unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HH of this part shall be used to determine compliance by each CAIR NO_x source with the CAIR NO_x emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x source and each CAIR NO_x unit at the

source shall hold, in the source's compliance account, CAIR NO_x allowances available for compliance deductions for the control period under § 97.154(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x units at the source, as determined in accordance with subpart HH of this part.

(2) A CAIR NO_x unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 97.170(b)(1), (2), or (5) and for each control period thereafter.

(3) A CAIR NO_x allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_x allowance was allocated.

(4) CAIR NO_x allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Allowance Tracking System accounts in accordance with subparts EE, FF, GG, and II of this part.

(5) A CAIR NO_x allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Annual Trading Program. No provision of the CAIR NO_x Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.105 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR NO_x allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart EE, FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from a CAIR NO_x source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR NO_x source emits nitrogen oxides during any control period in excess of the CAIR NO_x emissions limitation, then:

(1) The owners and operators of the source and each CAIR NO_x unit at the source shall surrender the CAIR NO_x allowances required for deduction under § 97.154(d)(1) and pay any fine,

penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR NO_x source and each CAIR NO_x unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 97.113 for the CAIR designated representative for the source and each CAIR NO_x unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 97.113 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HH of this part, provided that to the extent that subpart HH of this part provides for a 3-year period for record-keeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Annual Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Annual Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Annual Trading Program.

(2) The CAIR designated representative of a CAIR NO_x source and each CAIR NO_x unit at the source shall submit the reports required under the CAIR NO_x Annual Trading Program,

including those under subpart HH of this part.

(f) *Liability.* (1) Each CAIR NO_x source and each CAIR NO_x unit shall meet the requirements of the CAIR NO_x Annual Trading Program.

(2) Any provision of the CAIR NO_x Annual Trading Program that applies to a CAIR NO_x source or the CAIR designated representative of a CAIR NO_x source shall also apply to the owners and operators of such source and of the CAIR NO_x units at the source.

(3) Any provision of the CAIR NO_x Annual Trading Program that applies to a CAIR NO_x unit or the CAIR designated representative of a CAIR NO_x unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR NO_x Annual Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.105 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x source or CAIR NO_x unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.107 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Annual Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Annual Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_x Annual Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 97.108 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_x Annual Trading Program are set forth in part 78 of this chapter.

Subpart BB—CAIR Designated Representative for CAIR NO_x Sources**§ 97.110 Authorization and responsibilities of CAIR designated representative.**

(a) Except as provided under § 97.111, each CAIR NO_x source, including all CAIR NO_x units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Annual Trading Program concerning the source or any CAIR NO_x unit at the source.

(b) The CAIR designated representative of the CAIR NO_x source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x units at the source and shall act in accordance with the certification statement in § 97.113(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.113, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_x source represented and each CAIR NO_x unit at the source in all matters pertaining to the CAIR NO_x Annual Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Allowance Tracking System account will be established for a CAIR NO_x unit at a source, until the Administrator has received a complete certificate of representation under § 97.113 for a CAIR designated representative of the source and the CAIR NO_x units at the source.

(e)(1) Each submission under the CAIR NO_x Annual Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x source on behalf of which the submission is

made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_x source or a CAIR NO_x unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 97.111 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.113 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.113, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.102, 97.110(a) and (d), 97.112, 97.113, 97.115, 97.151 and 97.182, whenever the term "CAIR designated representative" is used in subparts AA through II

of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§97.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §97.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x source and the CAIR NO_x units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §97.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x source and the CAIR NO_x units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CAIR NO_x source or a CAIR NO_x unit is not included in the list of owners and operators in the certificate of representation under §97.113, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a

court, as if the owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR NO_x source or a CAIR NO_x unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under §97.113 amending the list of owners and operators to include the change.

§97.113 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR NO_x source, and each CAIR NO_x unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_x source and of each CAIR NO_x unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) “I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x unit at the source.”

(ii) “I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Annual Trading Program on behalf of the owners and operators of the source and of each CAIR NO_x unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.”

(iii) "I certify that the owners and operators of the source and of each CAIR NO_x unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) (Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_x unit, or where a utility or industrial customer purchases power from a CAIR NO_x unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x unit at the source; and CAIR NO_x allowances and proceeds of transactions involving CAIR NO_x allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_x allowances by contract, CAIR NO_x allowances and proceeds of transactions involving CAIR NO_x allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.114 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representa-

tion unless and until a superseding complete certificate of representation under § 97.113 is received by the Administrator.

(b) Except as provided in § 97.112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_x Annual Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x allowance transfers.

§ 97.115 Delegation by CAIR designated representative and alternate CAIR designated representative.

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR

§ 97.120

designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.115(d) shall be deemed to be an electronic submission by me.”

(ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.115(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.115 is terminated.”

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this sec-

tion shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CC—Permits

§ 97.120 General CAIR NO_x Annual Trading Program permit requirements.

(a) For each CAIR NO_x source required to have a title V operating permit or required, under subpart II of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by § 97.105, this subpart, and subpart II of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_x source and the CAIR NO_x units at the source covered by the CAIR permit, all applicable CAIR NO_x Annual Trading Program, CAIR NO_x Ozone Season Trading Program, and CAIR SO₂ Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 97.121 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR NO_x source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.122 for the source covering each CAIR NO_x unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR

Environmental Protection Agency

§ 97.140

NO_x unit commences commercial operation, except as provided in § 97.183(a).

(b) *Duty to reapply.* For a CAIR NO_x source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.122 for the source covering each CAIR NO_x unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in § 97.183(b).

§ 97.122 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_x source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR NO_x source;

(b) Identification of each CAIR NO_x unit at the CAIR NO_x source; and

(c) The standard requirements under § 97.106.

§ 97.123 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 97.122.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.102 and, upon

recordation by the Administrator under subpart EE, FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from the compliance account of the CAIR NO_x source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x source's title V operating permit or other federally enforceable permit as applicable.

§ 97.124 CAIR permit revisions.

Except as provided in § 97.123(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DD [Reserved]

Subpart EE—CAIR NO_x Allowance Allocations

§ 97.140 State trading budgets.

The State trading budgets for annual allocations of CAIR NO_x allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	69,020	57,517
Delaware	4,166	3,472
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New Jersey	12,670	10,558
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966
Total	1,521,707	1,268,091

§ 97.141 Timing requirements for CAIR NO_x allowance allocations.

(a) The Administrator will determine by order the CAIR NO_x allowance allocations, in accordance with § 97.142(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By July 31, 2011 and July 31 of each year thereafter, the Administrator will determine by order the CAIR NO_x allowance allocations, in accordance with § 97.142(a) and (b), for the control period in the fourth year after the year of the applicable deadline for determination under this paragraph.

(c) By July 31, 2009 and July 31 of each year thereafter, the Administrator will determine by order the CAIR NO_x allowance allocations, in accordance with § 97.142(a), (c), and (d), for the control period in the year of the applicable deadline for determination under this paragraph.

(d) The Administrator will make available to the public each determination of CAIR NO_x allowances under paragraph (a), (b), or (c) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with § 97.142. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with § 97.142.

§ 97.142 CAIR NO_x allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x allowance allocations under paragraph (b) of this section for each CAIR NO_x unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator), to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(iii) Gross electrical output and total heat energy under paragraph (a)(2)(ii) of this section will be determined based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator).

(3) The Administrator will determine what data are the best available data under paragraph (a)(2) of this section by weighing the likelihood that data are accurate and reliable and giving greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.

(b)(1) For each control period in 2009 and thereafter, the Administrator will allocate to all CAIR NO_x units in a State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the applicable State trading budget under § 97.140 (except as provided in paragraphs (d) and (e) of this section).

(2) The Administrator will allocate CAIR NO_x allowances to each CAIR NO_x unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x unit to the total amount of baseline heat input of all such CAIR NO_x units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the Administrator will allocate CAIR NO_x allowances to CAIR NO_x units in a State that are not allocated CAIR NO_x allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_x allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Administrator will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the applicable State trading budget under § 97.140.

(2) The CAIR designated representative of such a CAIR NO_x unit may submit to the Administrator a request, in a format specified by the Administrator, to be allocated CAIR NO_x allowances, starting with the later of the control period in 2009 or the first control period after the control period in

which the CAIR NO_x unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x allowances under paragraph (b) of this section. A separate CAIR NO_x allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before May 1 of such control period and after the date on which the CAIR NO_x unit commences commercial operation.

(3) In a CAIR NO_x allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x allowances in an amount not exceeding the CAIR NO_x unit's total tons of NO_x emissions during the calendar year immediately before such control period.

(4) The Administrator will review each CAIR NO_x allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x allowances for each control period pursuant to such request as follows:

(i) The Administrator will accept an allowance allocation request only if the request meets, or is adjusted by the Administrator as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after May 1 of the control period, the Administrator will determine the sum of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate the amount of CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate to each CAIR NO_x unit covered by

an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Administrator will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x allowances (if any) allocated for the control period to the CAIR NO_x unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set-aside under paragraph (c) of this section for a State for the control period, the Administrator will allocate to each CAIR NO_x unit that was allocated CAIR NO_x allowances under paragraph (b) of this section in the State an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the applicable State trading budget under § 97.140, and rounded to the nearest whole allowance as appropriate.

(e) If the Administrator determines that CAIR NO_x allowances were allocated under paragraphs (a) and (b) of this section, paragraphs (a) and (c) of this section, or paragraph (d) of this section for a control period and that the recipient of the allocation is not actually a CAIR NO_x unit under § 97.104 in such control period, then the Administrator will notify the CAIR designated representative and will act in accordance with the following procedures:

(1) Except as provided in paragraph (e)(2) or (3) of this section, the Administrator will not record such CAIR NO_x allowances under § 97.153.

Environmental Protection Agency

§ 97.143

(2) If the Administrator already recorded such CAIR NO_x allowances under § 97.153 and if the Administrator makes such determination before making deductions for the source that includes such recipient under § 97.154(b) for the control period, then the Administrator will deduct from the account in which such CAIR NO_x allowances were recorded under § 97.153 an amount of CAIR NO_x allowances allocated for the same or a prior control period equal to the amount of such already recorded CAIR NO_x allowances. The CAIR designated representative shall ensure that there are sufficient CAIR NO_x allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such CAIR NO_x allowances under § 97.153 and if the Administrator makes such determination after making deductions for the source that includes such recipient under § 97.154(b) for the control period, then the Administrator will apply paragraph (e)(1) or (2) of this section, as appropriate, to any subsequent control period for which CAIR NO_x allowances were allocated to such recipient.

(4) The Administrator will transfer the CAIR NO_x allowances that are not recorded, or that are deducted, in accordance with paragraphs (e)(1), (2), and (3) of this section to a new unit set-aside for the State in which such recipient is located.

§ 97.143 Compliance supplement pool.

(a) In addition to the CAIR NO_x allowances allocated under § 97.142, the Administrator may allocate for the control period in 2009 up to the following amount of CAIR NO_x allowances to CAIR NO_x units in the respective State:

State	Compliance supplement pool
Alabama	10,166
Delaware	843
District of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935
Louisiana	2,251
Maryland	4,670
Michigan	8,347

State	Compliance supplement pool
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
New Jersey	660
New York	0
North Carolina	0
Ohio	25,037
Pennsylvania	16,009
South Carolina	2,600
Tennessee	8,944
Texas	772
Virginia	5,134
West Virginia	16,929
Wisconsin	4,898
Total	199,997

(b) For any CAIR NO_x unit in a State, if the unit's average annual NO_x emission rate for 2007 or 2008 is less than 0.25 lb/mmBtu and, where such unit is included in a NO_x averaging plan under § 76.11 of this chapter under the Acid Rain Program for such year, the unit's NO_x averaging plan has an actual weighted average NO_x emission rate for such year equal to or less than the actual weighted average NO_x emission rate for the year before such year and if the unit achieves NO_x emission reductions in 2007 and 2008, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

(1) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with subpart HH of this part in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO_x unit shall submit to the Administrator by May 1, 2009 a request, in a format specified by the Administrator, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the unit's heat input for the control period in 2007 multiplied by the difference (if any greater than zero) between 0.25 lb/mmBtu and the unit's NO_x emission rate for the control period in 2007 plus the unit's heat input for the control period in 2008 multiplied by the difference

(if any greater than zero) between 0.25 lb/mmBtu and the unit's NO_x emission rate for the control period in 2008, determined in accordance with subpart HH of this part and with the sum divided by 2,000 lb/ton and rounded to the nearest whole number of tons as appropriate.

(c) For any CAIR NO_x unit in a State whose compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:

(1) The CAIR designated representative of such CAIR NO_x unit shall submit to the Administrator by May 1, 2009 a request, in a format specified by the Administrator, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

(d) The Administrator will review each request under paragraph (b) or (c)

of this section submitted by May 1, 2009 and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in a State and covered by such request as follows:

(1) Upon receipt of each such request, the Administrator will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of paragraph (b) or (c) of this section.

(2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Administrator will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under paragraph (d)(1) of this section).

(3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_x allowances than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the Administrator will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

$$\text{Unit's allocation} = \frac{\text{Unit's adjusted allocation} \times (\text{State's compliance supplement pool} + \text{Total adjusted allocations for all units})}{\text{Total adjusted allocations for all units}}$$

Where:

“Unit's allocation” is the amount of CAIR NO_x allowances allocated to the unit from the State's compliance supplement pool.

“Unit's adjusted allocation” is the amount of CAIR NO_x allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

“State's compliance supplement pool” is the amount of CAIR NO_x allowances in the State's compliance supplement pool.

“Total adjusted allocations for all units” is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

(4) By July 31, 2009, the Administrator will determine by order the allocations under paragraph (d)(2) or (3) of this section. The Administrator will make available to the public each determination of CAIR NO_x allowances under such paragraph and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with paragraph (b) or (c) of this section and paragraph (d)(2) or (3) of this section, as appropriate. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with such paragraphs.

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

§ 97.144 Alternative of allocation of CAIR NO_x allowances and compliance supplement pool by permitting authority.

(a) Notwithstanding §§ 97.141, 97.142, and 97.153 if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(1) of this chapter providing for allocation of CAIR NO_x allowances by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make allocations under §§ 97.141 and 97.142 for the CAIR NO_x units in the State, and under § 97.153, the Administrator will record the allocations made under such approved State implementation plan revision instead of allocations made under §§ 97.141 and 97.142.

(b) Notwithstanding § 97.143, if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(2) of this chapter providing for allocation of the State's compliance supplement pool by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision, the Administrator will not make allocations under § 97.143(d)(4) for the CAIR NO_x units in the State, and under

§ 97.143(d)(5), the Administrator will record the allocations of the State's compliance supplement pool made under such approved State implementation plan revision instead of allocations made under § 97.143(d)(4).

(c)(1) In implementing paragraph (a) of this section and §§ 97.141, 97.142, and 97.153, the Administrator will ensure that the total amount of CAIR NO_x allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(p)(1) of this chapter, for a control period for CAIR NO_x sources in the State or for other entities specified by the permitting authority will not exceed the State's State trading budget for the year of the control period.

(2) In implementing paragraph (b) of this section and § 97.143, the Administrator will ensure that the total amount of CAIR NO_x allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(p)(2), for CAIR NO_x sources in the State will not exceed the State's compliance supplement pool.

APPENDIX A TO SUBPART EE OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING ALLOCATIONS

1. The following States have State Implementation Plan revisions under § 51.123(p)(1) of this chapter approved by the Administrator and providing for allocation of CAIR NO_x allowances by the permitting authority under § 97.144(a):

[Reserved]

2. The following States have State Implementation Plan revisions under § 51.123(p)(2) of this chapter approved by the Administrator and providing for allocation of the Compliance Supplement Pool by the permitting authority under § 97.144(b):

[Reserved]

Subpart FF—CAIR NO_x Allowance Tracking System

§ 97.150 [Reserved]

§ 97.151 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 97.184(e), upon receipt of a complete certificate of representation under § 97.113, the Administrator will

establish a compliance account for the CAIR NO_x source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_x allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_x allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: “I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Annual Trading

Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.”

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR authorized account representative and alternate CAIR authorized account representative.*

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_x allowances held in the general account in all matters pertaining to the CAIR NO_x Annual Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate

CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_x allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) *Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.* (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account rep-

resentative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CAIR NO_x allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_x allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_x allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative and alternate*

CAIR authorized account representative.

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x Annual Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x allowance transfers.

(5) *Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.* (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FF and GG of this part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FF and GG of this part.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account rep-

resentative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(B) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.151(b)(5)(iv) shall be deemed to be an electronic submission by me.”; and

(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.151(b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.151(b)(5) is terminated.”.

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified

in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 97.152 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_x Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_x allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 97.153 Recordation of CAIR NO_x allowance allocations.

(a) By September 30, 2007, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source in accordance with § 97.142(a) and (b) for the control period in 2009.

(b) By September 30, 2008, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source in accordance with § 97.142(a) and (b) for the control period in 2010.

(c) By September 30, 2009, the Administrator will record in the CAIR NO_x

source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source in accordance with § 97.142(a) and (b) for the control periods in 2011, 2012, and 2013.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source in accordance with § 97.142(a) and (b) for the control period in the fourth year after the year of the applicable deadline for recordation under this paragraph.

(e) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source in accordance with § 97.142(a) and (c) for the control period in the year of the applicable deadline for recordation under this paragraph.

(f) *Serial numbers for allocated CAIR NO_x allowances.* When recording the allocation of CAIR NO_x allowances for a CAIR NO_x unit in a compliance account, the Administrator will assign each CAIR NO_x allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_x allowance is allocated.

§ 97.154 Compliance with CAIR NO_x emissions limitation.

(a) *Allowance transfer deadline.* The CAIR NO_x allowances are available to be deducted for compliance with a source's CAIR NO_x emissions limitation for a control period in a given calendar year only if the CAIR NO_x allowances:

(1) Were allocated for the control period in the year or a prior year; and

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_x allowance transfer correctly submitted for recordation under §§ 97.160 and 97.161 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 97.161, of CAIR NO_x allowance

transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_x allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_x emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_x allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HH of this part, from all CAIR NO_x units at the source for the control period; or

(2) If there are insufficient CAIR NO_x allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_x allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of CAIR NO_x allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_x source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR NO_x allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_x allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO_x allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR NO_x allowances that were allocated to any entity and transferred and recorded in the compliance

account pursuant to subpart GG of this part, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_x source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_x allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_x source or the CAIR NO_x units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart II.

(f) *Administrator's action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_x Annual Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_x allowances from or transfer CAIR NO_x allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 97.155 Banking.

(a) CAIR NO_x allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_x allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x allowance is deducted or transferred

Environmental Protection Agency

§ 97.162

under § 97.142, § 97.154, § 97.156, or subpart GG or II of this part.

§ 97.156 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_x Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 97.157 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§ 97.160 and 97.161 for any CAIR NO_x allowances in the account to one or more other CAIR NO_x Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_x allowances into the account under §§ 97.160 and 97.161 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GG—CAIR NO_x Allowance Transfers

§ 97.160 Submission of CAIR NO_x allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_x allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_x allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each CAIR NO_x allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 97.161 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_x allowance transfer, the Administrator will record a CAIR NO_x allowance transfer by moving each CAIR NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.160; and

(2) The transferor account includes each CAIR NO_x allowance identified by serial number in the transfer.

(b) A CAIR NO_x allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_x allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 97.154 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR NO_x allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 97.162 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR NO_x allowance transfer under § 97.161, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR NO_x allowance transfer that fails to meet the requirements of § 97.161(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recording.

(c) Nothing in this section shall preclude the submission of a CAIR NO_x allowance transfer for recordation following notification of non-recording.

Subpart HH—Monitoring and Reporting

§ 97.170 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_x unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.102 and in § 72.2 of this chapter shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” or “CEMS”) in part 75 of this chapter shall be deemed to refer to the terms “CAIR NO_x unit,” “CAIR designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in § 97.102. The owner or operator of a unit that is not a CAIR NO_x unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_x unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR NO_x unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input (including all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with (§§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 97.171 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR NO_x unit that commences commercial operation before July 1, 2007, by January 1, 2008.

(2) For the owner or operator of a CAIR NO_x unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:

(i) January 1, 2008; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR NO_x unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, by the date specified in § 97.184(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a CAIR NO_x opt-in unit under subpart II of this part, by the date on which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program as provided in § 97.184(g).

(c) *Reporting data.* The owner or operator of a CAIR NO_x unit that does not

meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_x mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CAIR NO_x unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.175.

(2) No owner or operator of a CAIR NO_x unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR NO_x unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR NO_x unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.105 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.171(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR NO_x unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 97.171 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR NO_x unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.170(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 97.175 to determine whether the approval applies under the CAIR NO_x Annual Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_x unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.170(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.170(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.170(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in ac-

cordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_x monitoring system under appendix E to part 75 of this chapter, under § 97.170(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 97.170(a)(1). For recertifications, replace the words “certification” and “initial certification” with the word “recertification”, replace the word “certified” with the word “recertified”, and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.173.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR NO_x Annual Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid

quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_x Annual Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under para-

graph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.172(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(1) For a disapproved NO_x emission rate (*i.e.*, NO_x-diluent) system, the maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.

(2) For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5,

2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(4) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(5) For a disapproved excepted NO_x monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_x emission rate, as defined in §72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under §75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under §75.19 of this chapter shall meet the applicable certification and recertification requirements in §§75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in §75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of §75.20(f) of this chapter.

§97.172 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted

using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §97.171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in §97.171 for each disapproved monitoring system.

§97.173 Notifications.

The CAIR designated representative for a CAIR NO_x unit shall submit written notice to the Administrator in accordance with §75.61 of this chapter.

§97.174 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under §75.73 of this chapter, and the requirements of §97.110(e)(1).

(b) *Monitoring plans.* The owner or operator of a CAIR NO_x unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, §§ 97.183 and 97.184(a).

(c) *Certification applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.171, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the NO_x mass emissions data and heat input data for the CAIR NO_x unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering January 1, 2008 through March 31, 2008;

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.170(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering January 1, 2008 through March 31, 2008;

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the calendar quarter corresponding to the date specified in § 97.184(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_x opt-in unit under subpart II of this part, the calendar quarter corresponding to the date on which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program as provided in § 97.184(g).

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(3) For CAIR NO_x units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Ozone Season Trading Program, CAIR SO₂ Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_x mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on NO_x emission controls and for all hours where NO_x data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions.

§ 97.175 Petitions.

The CAIR designated representative of a CAIR NO_x unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this

subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

Subpart II—CAIR NO_x Opt-In Units

§ 97.180 Applicability.

A CAIR NO_x opt-in unit must be a unit that:

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter establishing procedures concerning CAIR opt-in units;

(b) Is not a CAIR NO_x unit under § 97.104 and is not covered by a retired unit exemption under § 97.105 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§ 97.181 General.

(a) Except as otherwise provided in §§ 97.101 through 97.104, §§ 97.106 through 97.108, and subparts BB and CC and subparts FF through HH of this part, a CAIR NO_x opt-in unit shall be treated as a CAIR NO_x unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_x unit before issuance of a CAIR opt-in permit for such unit.

§ 97.182 CAIR designated representative.

Any CAIR NO_x opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not

yet issued or denied under this subpart, located at the same source as one or more CAIR NO_x units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x units.

§ 97.183 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x opt-in unit in § 97.180 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.186(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.122;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR NO_x unit under § 97.104 and is not covered by a retired unit exemption under § 97.105 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Vents all of its emissions to a stack; and

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.122;

(3) A monitoring plan in accordance with subpart HH of this part;

(4) A complete certificate of representation under § 97.113 consistent with § 97.182, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x allowances under § 97.188(b) or § 97.188(c) (subject to the conditions in §§ 97.184(h) and 97.186(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator. If allocation under § 97.188(c) is requested, this statement shall include a

statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR NO_x opt-in unit shall submit a complete CAIR permit application under § 97.122 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_x opt-in unit from the CAIR NO_x Annual Trading Program in accordance with § 97.186 or the unit becomes a CAIR NO_x unit under § 97.104, the CAIR NO_x opt-in unit shall remain subject to the requirements for a CAIR NO_x opt-in unit, even if the CAIR designated representative for the CAIR NO_x opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 97.184 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.183 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.183. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HH of this part. A determination of sufficiency shall not be

construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_x emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HH of this part and continuing until a CAIR opt-in permit is denied under § 97.184(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x Annual Trading Program in accordance with § 97.186.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_x Annual Trading Program under § 97.184(g), during which period monitoring system availability must not be less than 90 percent under subpart HH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the NO_x emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_x Annual Trading Program under § 97.184(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of

this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section.

(d) *Baseline NO_x emission rate.* The unit's baseline NO_x emission rate shall equal:

(1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_x emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section; or

(3) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_x emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x opt-in unit in §97.180 and meets the elements certified in §97.183(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish

a compliance account for the source that includes the CAIR NO_x opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x opt-in unit in §97.180 or meets the elements certified in §97.183(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR NO_x Annual Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_x opt-in unit, and a CAIR NO_x unit, as of the later of January 1, 2009 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR NO_x opt-in unit.*

(1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x opt-in unit of CAIR NO_x allowances under §97.188(c) and such unit is repowered after its date of entry into the CAIR NO_x Annual Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_x opt-in unit replacing the original CAIR NO_x opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_x emission rate as the original CAIR NO_x opt-in unit, and the original CAIR NO_x opt-in unit shall no longer be treated as a CAIR NO_x opt-in unit or a CAIR NO_x unit.

§97.185 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 97.122;

(2) The certification in § 97.183(a)(2);

(3) The unit's baseline heat input under § 97.184(c);

(4) The unit's baseline NO_x emission rate under § 97.184(d);

(5) A statement whether the unit is to be allocated CAIR NO_x allowances under § 97.188(b) or § 97.188(c) (subject to the conditions in §§ 97.184(h) and 97.186(g));

(6) A statement that the unit may withdraw from the CAIR NO_x Annual Trading Program only in accordance with § 97.186; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.187.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.102 and, upon recordation by the Administrator under subpart FF or GG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_x allowances to or from the compliance account of the source that includes a CAIR NO_x opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_x opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 97.186 Withdrawal from CAIR NO_x Annual Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_x opt-in unit may withdraw from the CAIR NO_x Annual Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_x opt-in unit of the acceptance of the withdrawal of the CAIR NO_x opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR NO_x opt-in unit from the CAIR NO_x Annual Trading Program, the CAIR designated representative of the CAIR NO_x opt-in unit shall submit to the permitting authority a

request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR NO_x Annual Trading Program under § 97.184(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR NO_x opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_x Annual Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x opt-in unit must meet the requirement to hold CAIR NO_x allowances under § 97.106(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_x opt-in unit CAIR NO_x allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under § 97.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_x units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_x opt-in unit may submit a CAIR NO_x allowance transfer for any remaining CAIR NO_x allowances to another CAIR NO_x Allowance Tracking System in accordance with subpart GG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_x allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x opt-in unit of the acceptance of the withdrawal of the CAIR NO_x opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x opt-in unit that the CAIR NO_x opt-in unit's request to withdraw is denied. Such CAIR NO_x opt-in unit shall continue to be a CAIR NO_x opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_x opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_x opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_x Annual Trading Program concerning any control periods for which the unit is a CAIR NO_x opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR NO_x opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR NO_x Annual Trading Program.* Once a CAIR NO_x opt-in unit withdraws from the CAIR NO_x Annual Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 97.183 for such CAIR NO_x opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.184.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_x opt-in unit shall not be eligible to withdraw from the CAIR NO_x Annual Trading Program if the CAIR designated represent-

ative of the CAIR NO_x opt-in unit requests, and the permitting authority issues a CAIR NO_x opt-in permit providing for, allocation to the CAIR NO_x opt-in unit of CAIR NO_x allowances under § 97.188(c).

§ 97.187 Change in regulatory status.

(a) *Notification.* If a CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_x opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104, the permitting authority will revise the CAIR NO_x opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.123, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_x opt-in unit that becomes a CAIR NO_x unit under § 97.104, CAIR NO_x allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under § 97.188 for any control period after the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104; and

(B) If the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104 is not December 31, the CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under § 97.188 for the control period that includes the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the

CAIR NO_x unit that becomes a CAIR NO_x unit under § 97.104 contains the CAIR NO_x allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104, the CAIR NO_x opt-in unit will be allocated CAIR NO_x allowances under § 97.142.

(ii) If the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104 is not December 31, the following amount of CAIR NO_x allowances will be allocated to the CAIR NO_x opt-in unit (as a CAIR NO_x unit) under § 97.142 for the control period that includes the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104:

(A) The amount of CAIR NO_x allowances otherwise allocated to the CAIR NO_x opt-in unit (as a CAIR NO_x unit) under § 97.142 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 97.104, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 97.188 CAIR NO_x allowance allocations to CAIR NO_x opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.184(e), the permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under § 97.184(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period after the control period in which a CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under § 97.184(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and

in which the unit is a CAIR NO_x opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_x allowance allocation will be the lesser of:

(i) The CAIR NO_x opt-in unit's baseline heat input determined under § 97.184(c); or

(ii) The CAIR NO_x opt-in unit's heat input, as determined in accordance with subpart HH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under § 97.184(g).

(2) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x allowance allocations will be the lesser of:

(i) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 97.184(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period for which CAIR NO_x allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_x emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 97.183(a)(5)) providing for, allocation to a CAIR NO_x opt-in unit of CAIR NO_x

allowances under this paragraph (subject to the conditions in §§97.184(h) and 97.186(g)), the permitting authority will allocate to the CAIR NO_x opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with (51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) For each control period in 2009 through 2014 for which the CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO_x allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x allowance allocations will be the lesser of:

(A) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under §97.184(d); or

(B) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period in which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under §97.184(g).

(iii) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR NO_x allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_x emission rate (in lb/mmBtu) used for calculating the CAIR NO_x allowance allocation will be the lesser of:

(A) 0.15 lb/mmBtu;

(B) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under §97.184(d); or

(C) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period for which CAIR NO_x allowances are to be allocated.

(iii) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation.* If provided in a State implementation plan revision submitted in accordance with §51.123(p)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_x opt-in unit, the CAIR NO_x allowances allocated by the permitting authority to the CAIR NO_x opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under §97.184(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x opt-in unit, the CAIR NO_x allowances allocated by the permitting authority to the CAIR NO_x opt-in unit under paragraph (a)(2) of this section.

APPENDIX A TO SUBPART II OF PART 97— STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING CAIR NO_x OPT-IN UNITS

1. The following States have State Implementation Plan revisions under §51.123(p)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_x opt-in units under subpart II of this part and allocation of CAIR NO_x allowances to such units under §97.188(b):

[Reserved]

2. The following States have State Implementation Plan revisions under §51.123(p)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_x opt-in units under subpart II of this part and allocation of CAIR NO_x allowances to such units under §97.188(c):

[Reserved]

Subpart AAA—CAIR SO₂ Trading Program General Provisions**§ 97.201 Purpose.**

This subpart and subparts BBB through III set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) SO₂ Trading Program, under section 110 of the Clean Air Act and § 52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

§ 97.202 Definitions.

The terms used in this subpart and subparts BBB through III shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR SO₂ Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to CAIR SO₂ allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit or other entity and, with regard to CAIR SO₂ allowances issued under § 97.288 or provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) or (r) of this chapter, the determination by a permitting authority of the amount of such CAIR SO₂ allowances to be initially credited to a CAIR SO₂ unit or other entity.

Allowance transfer deadline means, for a control period, midnight of March 1 (if it is a business day), or midnight of

the first business day thereafter (if March 1 is not a business day), immediately following the control period and is the deadline by which a CAIR SO₂ allowance transfer must be submitted for recordation in a CAIR SO₂ source's compliance account in order to be used to meet the source's CAIR SO₂ emissions limitation for such control period in accordance with § 97.254.

Alternate CAIR designated representative means, for a CAIR SO₂ source and each CAIR SO₂ unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBB and III of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO₂ Trading Program. If the CAIR SO₂ source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR SO₂ source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO₂ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR SO₂ source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHH of this part.

Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBB, FFF, and III of this part, to transfer and otherwise dispose of CAIR SO₂ allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR SO₂ source and each CAIR SO₂ unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBB and III of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO₂ Trading Program. If the CAIR SO₂ source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR SO₂ source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO₂ source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR SO₂ source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with sub-

parts AA through II of this part and (§51.123(p) and 52.35 of this chapter or approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and §51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x Ozone Season source means a source that is subject to the CAIR NO_x Ozone Season Trading Program.

CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and (§51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with under subparts AAAA through IIII and §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x source means a source that is subject to the CAIR NO_x Annual Trading Program.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCC of this part, including any permit revisions, specifying the CAIR SO₂ Trading Program requirements applicable to a CAIR SO₂ source, to each CAIR SO₂ unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO₂ allowance means a limited authorization issued by the Administrator under the Acid Rain Program, by a permitting authority under §97.288, or by a permitting authority under provisions of a State implementation plan that are approved under §51.124(o)(1) or (2) or (r) of this chapter, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO₂ Trading Program as follows:

(1) For one CAIR SO₂ allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in § 97.254(b);

(2) For one CAIR SO₂ allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in § 97.254(b); and

(3) For one CAIR SO₂ allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in § 97.254(b).

(4) An authorization to emit sulfur dioxide that is not issued under the Acid Rain Program, § 97.288, or provisions of a State implementation plan that are approved under § 51.124(o)(1) or (2) or (r) of this chapter shall not be a CAIR SO₂ allowance.

CAIR SO₂ allowance deduction or deduct CAIR SO₂ allowances means the permanent withdrawal of CAIR SO₂ allowances by the Administrator from a compliance account, *e.g.*, in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO₂ units at a CAIR SO₂ source for a control period, determined in accordance with subpart HHH of this part, or to account for excess emissions.

CAIR SO₂ Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO₂ allowances under the CAIR SO₂ Trading Program. This is the same system as the Allowance Tracking System under § 72.2 of this chapter by which the Administrator records allocations, deduction, and transfers of Acid Rain SO₂ allowances under the Acid Rain Program.

CAIR SO₂ Allowance Tracking System account means an account in the CAIR SO₂ Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO₂ allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR SO₂ allowances held or hold CAIR SO₂ allowances means the CAIR SO₂ allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF, GGG, and III of this part or part 73 of this chapter, in

a CAIR SO₂ Allowance Tracking System account.

CAIR SO₂ emissions limitation means, for a CAIR SO₂ source, the tonnage equivalent, in SO₂ emissions in a control period, of the CAIR SO₂ allowances available for deduction for the source under § 97.254(a) and (b) for the control period.

CAIR SO₂ source means a source that includes one or more CAIR SO₂ units.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and §§ 51.124(r) and 52.36 of this chapter or approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o) (1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO₂ unit means a unit that is subject to the CAIR SO₂ Trading Program under § 97.204 and, except for purposes of § 97.205, a CAIR SO₂ opt-in unit under subpart III of this part.

Certifying official means:

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means combusting any amount of coal or coal-derived fuel, alone, or in combination with any amount of any other fuel.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 97.205 and § 97.284(h).

(i) For a unit that is a CAIR SO₂ unit under § 97.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of com-

mencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR SO₂ unit under § 97.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.205, for a unit that is not a CAIR SO₂ unit under § 97.204 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO₂ unit under § 97.204.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 97.284(h).

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (*e.g.*, repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 97.284(h).

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR SO₂ Allowance Tracking System account, established by the Administrator for a CAIR SO₂ source subject to an Acid Rain emissions limitations under § 73.31(a) or (b) of this chapter or for any other CAIR SO₂ source under subpart FFF or III of this part, in which any CAIR SO₂ allowance allocations for the CAIR SO₂ units at the source are initially recorded and in which are held any CAIR SO₂ allowances available for use for a control period in order to meet the source's CAIR SO₂ emissions limitation in accordance with § 97.254.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of sulfur dioxide emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor

and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A sulfur dioxide monitoring system, consisting of a SO₂ pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of SO₂ emissions, in parts per million (ppm);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;

(4) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and

(5) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂ in percent O₂.

Control period means the period beginning January 1 of a calendar year, except as provided in § 97.206(c)(2), and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHH of this part.

Excess emissions means any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO₂ units at a CAIR SO₂ source during a control period that exceeds the CAIR SO₂ emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

General account means a CAIR SO₂ Allowance Tracking System account, established under subpart FFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period no less than 25 years or 70 percent of the economic useful

life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal SO₂ emissions limitation means, with regard to a unit, the lowest SO₂ emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

Operator means any person who operates, controls, or supervises a CAIR SO₂ unit or a CAIR SO₂ source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR SO₂ source or a CAIR SO₂ unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR SO₂ unit at the source or the CAIR SO₂ unit;

(ii) Any holder of a leasehold interest in a CAIR SO₂ unit at the source or the CAIR SO₂ unit; or

(iii) Any purchaser of power from a CAIR SO₂ unit at the source or the CAIR SO₂ unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR SO₂ unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR SO₂ allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR SO₂ allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR SO₂ Trading Program in accordance with subpart CCC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Ad-

ministrator in the regular course of business.

Recordation, record, or recorded means, with regard to CAIR SO₂ allowances, the movement of CAIR SO₂ allowances by the Administrator into or between CAIR SO₂ Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, replace, or replaced means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Serial number means, for a CAIR SO₂ allowance, the unique identification

number assigned to each CAIR SO₂ allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a “solid waste incineration unit” as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a “source,” including a “source” with multiple units, shall be considered a single “facility.”

State means one of the States or the District of Columbia that is subject to the CAIR SO₂ Trading Program pursuant to § 52.35 of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any “submission” or “service” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR SO₂ emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device. *Unit operating day* means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

- (1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;
- (2) Used in a heating application (*e.g.*, space heating or domestic hot water heating); or
- (3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

Environmental Protection Agency

§ 97.204

§ 97.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBB through III are defined as follows:

Btu—British thermal unit.

CO₂—carbon dioxide.

H₂O—water.

Hg—mercury.

hr—hour.

kW—kilowatt electrical.

kWh—kilowatt hour.

lb—pound.

mmBtu—million Btu.

MWe—megawatt electrical.

MWh—megawatt hour.

NO_x—nitrogen oxides.

O₂—oxygen.

ppm—parts per million.

scfh—standard cubic feet per hour.

SO₂—sulfur dioxide.

yr—year.

§ 97.204 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR SO₂ units, and any source that includes one or more such units shall be a CAIR SO₂ source, subject to the requirements of this subpart and subparts BBB through HHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR SO₂ unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR SO₂ unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR SO₂ units:

(1)(i) Any unit that is a CAIR SO₂ unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO₂ unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR SO₂ unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR SO₂ unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-

fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR SO₂ unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR SO₂ Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: “I am authorized to make this submission on behalf of the owners and operators of the unit for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(2) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division (or its successor),

U.S. Environmental Protection Agency, who will act on the petition as the Administrator’s duly authorized representative.

(3) *Response.* The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator’s determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR SO₂ Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

§ 97.205 Retired unit exemption.

(a)(1) Any CAIR SO₂ unit that is permanently retired and is not a CAIR SO₂ opt-in unit under subpart III of this part shall be exempt from the CAIR SO₂ Trading Program, except for the provisions of this section, §§ 97.202, 97.203, 97.204, 97.206(c)(4) through (7), 97.207, 97.208, and subparts BBB, FFF, and GGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR SO₂ unit is permanently retired. Within 30 days of the unit’s permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any sulfur dioxide,

starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR SO₂ Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 97.222 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(5) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(4) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(4) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(6) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.206 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR SO₂ source required to have a title V operating permit and each CAIR SO₂ unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.222 in accordance with the deadlines specified in § 97.221; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR SO₂ source required to have a title V operating permit and each CAIR SO₂ unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart III of this part, the owners and operators of a CAIR SO₂ source that is not otherwise required to have a title V operating permit and each CAIR SO₂ unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCC of this part for such CAIR SO₂ source and such CAIR SO₂ unit.

(b) *Monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR SO₂ source and each CAIR SO₂ unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHH of this part shall be used to determine compliance by each CAIR SO₂ source with the CAIR SO₂ emissions limitation under paragraph (c) of this section.

(c) *Sulfur dioxide emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO₂ source and each CAIR SO₂ unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO₂ allowances available for compliance deductions for the control period, as determined in accordance with § 97.254(a) and (b), not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO₂ units at the source, as determined in accordance with subpart HHH of this part.

(2) A CAIR SO₂ unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit(s) monitor certification requirements under § 97.270(b)(1),(2), or (5) and for each control period thereafter.

(3) A CAIR SO₂ allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR SO₂ allowance was allocated.

(4) CAIR SO₂ allowances shall be held in, deducted from, or transferred into or among CAIR SO₂ Allowance Tracking System accounts in accordance with subparts FFF, GGG, and III of this part.

(5) A CAIR SO₂ allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO₂ Trading Program. No provision of the CAIR SO₂ Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.205 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR SO₂ allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO₂ allowance

to or from a CAIR SO₂ source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR SO₂ source emits sulfur dioxide during any control period in excess of the CAIR SO₂ emissions limitation, then:

(1) The owners and operators of the source and each CAIR SO₂ unit at the source shall surrender the CAIR SO₂ allowances required for deduction under § 97.254(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR SO₂ source and each CAIR SO₂ unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 97.213 for the CAIR designated representative for the source and each CAIR SO₂ unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 97.213 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHH of this part, provided that to the extent that subpart HHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR SO₂ Trading Program.

Environmental Protection Agency

§ 97.210

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO₂ Trading Program or to demonstrate compliance with the requirements of the CAIR SO₂ Trading Program.

(2) The CAIR designated representative of a CAIR SO₂ source and each CAIR SO₂ unit at the source shall submit the reports required under the CAIR SO₂ Trading Program, including those under subpart HHH of this part.

(f) *Liability.* (1) Each CAIR SO₂ source and each CAIR SO₂ unit shall meet the requirements of the CAIR SO₂ Trading Program.

(2) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ source or the CAIR designated representative of a CAIR SO₂ source shall also apply to the owners and operators of such source and of the CAIR SO₂ units at the source.

(3) Any provision of the CAIR SO₂ Trading Program that applies to a CAIR SO₂ unit or the CAIR designated representative of a CAIR SO₂ unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR SO₂ Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 97.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO₂ source or CAIR SO₂ unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.207 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR SO₂ Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR SO₂ Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR SO₂ Trading Program, falls on a

weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 97.208 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR SO₂ Trading Program are set forth in part 78 of this chapter.

Subpart BBB—CAIR Designated Representative for CAIR SO₂ Sources

§ 97.210 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 97.211, each CAIR SO₂ source, including all CAIR SO₂ units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO₂ Trading Program concerning the source or any CAIR SO₂ unit at the source.

(b) The CAIR designated representative of the CAIR SO₂ source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO₂ units at the source and shall act in accordance with the certification statement in § 97.213(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.213, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR SO₂ source represented and each CAIR SO₂ unit at the source in all matters pertaining to the CAIR SO₂ Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO₂ Allowance Tracking System account will be established for a CAIR SO₂ unit at a source, until the Administrator has received a complete certificate of representation under § 97.213 for a CAIR designated

§ 97.211

representative of the source and the CAIR SO₂ units at the source.

(e)(1) Each submission under the CAIR SO₂ Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO₂ source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR SO₂ source or a CAIR SO₂ unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 97.211 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.213 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.213, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed

40 CFR Ch. I (7-1-06 Edition)

to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.202, 97.210(a) and (d), 97.212, 97.213, 97.215, 97.251 and 97.282, whenever the term "CAIR designated representative" is used in subparts AAA through III of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 97.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR SO₂ source and the CAIR SO₂ units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO₂ source and the CAIR SO₂ units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CAIR SO₂ source or a CAIR SO₂ unit is not included in the list of owners and operators in the certificate of representation under § 97.213, such owner or operator shall be deemed to be subject to

and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR SO₂ source or a CAIR SO₂ unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 97.213 amending the list of owners and operators to include the change.

§ 97.213 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR SO₂ source, and each CAIR SO₂ unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR SO₂ source and of each CAIR SO₂ unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) “I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO₂ unit at the source.”

(ii) “I certify that I have all the necessary authority to carry out my duties and responsibilities under the

CAIR SO₂ Trading Program on behalf of the owners and operators of the source and of each CAIR SO₂ unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.”

(iii) “I certify that the owners and operators of the source and of each CAIR SO₂ unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit.”

(iv) “Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR SO₂ unit, or where a utility or industrial customer purchases power from a CAIR SO₂ unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the ‘CAIR designated representative’ or ‘alternate CAIR designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO₂ unit at the source; and CAIR SO₂ allowances and proceeds of transactions involving CAIR SO₂ allowances will be deemed to be held or distributed in proportion to each holder’s legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR SO₂ allowances by contract, CAIR SO₂ allowances and proceeds of transactions involving CAIR SO₂ allowances will be deemed to be held or distributed in accordance with the contract.”

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.214 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.213 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.213 is received by the Administrator.

(b) Except as provided in § 97.212(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR SO₂ Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO₂ allowance transfers.

§ 97.215 Delegation by CAIR designated representative and alternate CAIR designated representative.

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delega-

tion, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.215(d) shall be deemed to be an electronic submission by me.”

(ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.215(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.215 is terminated.”

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or

eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CCC—Permits

§ 97.220 General CAIR SO₂ Trading Program permit requirements.

(a) For each CAIR SO₂ source required to have a title V operating permit or required, under subpart III of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by § 97.205, this subpart, and subpart III of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR SO₂ source and the CAIR SO₂ units at the source covered by the CAIR permit, all applicable CAIR SO₂ Trading Program, CAIR NO_x Annual Trading Program, and CAIR NO_x Ozone Season Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 97.221 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR SO₂ source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.222 for the

source covering each CAIR SO₂ unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the CAIR SO₂ unit commences commercial operation, except as provided in § 97.283(a).

(b) *Duty to reapply.* For a CAIR SO₂ source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.222 for the source covering each CAIR SO₂ unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in § 97.283(b).

§ 97.222 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR SO₂ source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR SO₂ source;

(b) Identification of each CAIR SO₂ unit at the CAIR SO₂ source; and

(c) The standard requirements under § 97.206.

§ 97.223 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 97.222.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO₂ allowance to or from the compliance account of the CAIR SO₂ source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR SO₂ source's title V operating permit or other federally enforceable permit as applicable.

§ 97.224 CAIR permit revisions.

Except as provided in § 97.223(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subparts DDD—EEE [Reserved]

Subpart FFF—CAIR SO₂ Allowance Tracking System

§ 97.250 [Reserved]

§ 97.251 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 97.284(e), upon receipt of a complete certificate of representation under § 97.213, the Administrator will establish a compliance account for the CAIR SO₂ source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts—(1) Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR SO₂ allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO₂ allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: “I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO₂ allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO₂ Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.”

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR authorized account representative and alternate CAIR authorized account representative.*

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO₂ allowances held in the general account in all matters pertaining to the CAIR SO₂ Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO₂ allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO₂ allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting re-

quired statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) *Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.* (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO₂ allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO₂ allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CAIR SO₂ allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and

submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR SO₂ allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO₂ allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative and alternate CAIR authorized account representative.* (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO₂ Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the

proceeds of CAIR SO₂ allowance transfers.

(5) *Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.* (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFF and GGG of this part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFF and GGG of this part.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(B) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice

Environmental Protection Agency

§ 97.253

of delegation is superseded by another notice of delegation under 40 CFR 97.251(b)(5)(iv) shall be deemed to be an electronic submission by me.”; and

(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.251 (b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address, unless all delegation of authority by me under 40 CFR 97.251 (b)(5) is terminated.”.

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 97.252 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR SO₂ Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO₂ allowances in the

account, shall be made only by the CAIR authorized account representative for the account.

§ 97.253 Recordation of CAIR SO₂ allowances.

(a)(1) After a compliance account is established under § 97.251(a) or § 73.31(a) or (b) of this chapter, the Administrator will record in the compliance account any CAIR SO₂ allowance allocated to any CAIR SO₂ unit at the source for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO₂ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 97.254(b), the Administrator will record in the compliance account any CAIR SO₂ allowance allocated to any CAIR SO₂ unit at the source for the new 30th year (*i.e.*, the year that is 30 years after the calendar year for which such deductions are or could be made) and any CAIR SO₂ allowance allocated for the new 30th year and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(b)(1) After a general account is established under § 97.251(b) or § 73.31(c) of this chapter, the Administrator will record in the general account any CAIR SO₂ allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 97.254(b), the Administrator will record in the general account any CAIR SO₂ allowance allocated for the new 30th year (*i.e.*, the year that is 30 years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(c) *Serial numbers for allocated CAIR SO₂ allowances.* When recording the allocation of CAIR SO₂ allowances issued by a permitting authority under § 97.288, the Administrator will assign each such CAIR SO₂ allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR SO₂ allowance is allocated.

§ 97.254 Compliance with CAIR SO₂ emissions limitation.

(a) *Allowance transfer deadline.* The CAIR SO₂ allowances are available to be deducted for compliance with a source's CAIR SO₂ emissions limitation for a control period in a given calendar year only if the CAIR SO₂ allowances:

(1) Were allocated for the control period in the year or a prior year; and

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO₂ allowance transfer correctly submitted for recordation under §§ 97.260 and 97.261 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 97.261, of CAIR SO₂ allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR SO₂ allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period as follows:

(1) For a CAIR SO₂ source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:

(i) Deduct the amount of CAIR SO₂ allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 97.288, that is required under §§ 73.35(b) and (c) of this part. If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(b) and (c) of this chapter.

(ii) Deduct the amount of CAIR SO₂ allowances, not issued by a permitting

authority under § 97.288, that is required under §§ 73.35(d) and 77.5 of this part. If there are sufficient CAIR SO₂ allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(d) and 77.5 of this chapter.

(iii) Treating the CAIR SO₂ allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period, as follows:

(A) Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO₂ units at the source for the control period; or

(B) If there are insufficient CAIR SO₂ allowances to complete the deductions in paragraph (b)(1)(iii)(A) of this section, until no more CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) remain in the compliance account.

(2) For a CAIR SO₂ source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO₂ allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 97.288) in order to determine whether the source meets the CAIR SO₂ emissions limitation for the control period, as follows:

(i) Until the tonnage equivalent of the CAIR SO₂ allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO₂ units at the source for the control period; or

(ii) If there are insufficient CAIR SO₂ allowances to complete the deductions in paragraph (b)(2)(i) of this section, until no more CAIR SO₂ allowances available under paragraph (a) of this

section (including any issued by a permitting authority under § 97.288) remain in the compliance account.

(c)(1) *Identification of CAIR SO₂ allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO₂ allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR SO₂ source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR SO₂ allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO₂ allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;

(ii) Any CAIR SO₂ allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(iii) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;

(iv) Any CAIR SO₂ allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(v) Any CAIR SO₂ allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and

(vi) Any CAIR SO₂ allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR SO₂ source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO₂ allowances, allocated for the control period in the immediately following calendar year (including any issued by a permitting authority under § 97.288), equal to, or exceeding in accordance with paragraphs (c)(1) and (2) of this section 3 times the following amount: the number of tons of the source's excess emissions minus, if the source is subject to an Acid Rain emissions limitation, the amount of the CAIR SO₂ allowances required to be deducted under paragraph (b)(1)(ii) of this section.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR SO₂ source or the CAIR SO₂ units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart III.

(f) *Administrator's action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR SO₂ Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR SO₂ allowances from or transfer CAIR SO₂ allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section,

§ 97.255

and record such deductions and transfers.

§ 97.255 Banking.

(a) CAIR SO₂ allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR SO₂ allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO₂ allowance is deducted or transferred under § 97.254, § 97.256, or subpart GGG or III of this part.

§ 97.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO₂ Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 97.257 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§ 97.260 and 97.261 for any CAIR SO₂ allowances in the account to one or more other CAIR SO₂ Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR SO₂ allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR SO₂ allowances into the account under §§ 97.260 and 97.261 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

40 CFR Ch. I (7–1–06 Edition)

**Subpart GGG—CAIR SO₂
Allowance Transfers**

§ 97.260 Submission of CAIR SO₂ allowance transfers.

(a) A CAIR authorized account representative seeking recordation of a CAIR SO₂ allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO₂ allowance transfer shall include the following elements, in a format specified by the Administrator:

(1) The account numbers of both the transferor and transferee accounts;

(2) The serial number of each CAIR SO₂ allowance that is in the transferor account and is to be transferred; and

(3) The name and signature of the CAIR authorized account representatives of the transferor and transferee accounts and the dates signed.

(b)(1) The CAIR authorized account representative for the transferee account can meet the requirements in paragraph (a)(3) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any CAIR authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.

(2) The statement under paragraph (b)(1) of this section shall include the following: “By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under State or Federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any CAIR authorized account representative for such account unless and until a statement signed by the CAIR

Environmental Protection Agency

§ 97.270

authorized account representative retracting this authorization for the account is received by the Administrator.”

§ 97.261 EPA recordation.

(a) Within 5 business days (except as necessary to perform a transfer in perpetuity of CAIR SO₂ allowances allocated to a CAIR SO₂ unit or as provided in paragraph (b) of this section) of receiving a CAIR SO₂ allowance transfer, the Administrator will record a CAIR SO₂ allowance transfer by moving each CAIR SO₂ allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 97.260;

(2) The transferor account includes each CAIR SO₂ allowance identified by serial number in the transfer; and

(3) The transfer is in accordance with the limitation on transfer under § 74.42 of this chapter and § 74.47(c) of this chapter, as applicable.

(b) A CAIR SO₂ allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO₂ allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 97.254 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR SO₂ allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 97.262 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR SO₂ allowance transfer under § 97.261, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR SO₂ allowance transfer that fails to meet the requirements of § 97.261(a), the Administrator will notify the CAIR authorized account representatives of

both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR SO₂ allowance transfer for recordation following notification of non-recordation.

Subpart HHH—Monitoring and Reporting

§ 97.270 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR SO₂ unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subparts F and G of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.202 and in § 72.2 of this chapter shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in part 75 of this chapter shall be deemed to refer to the terms “CAIR SO₂ unit,” “CAIR designated representative,” and “continuous emission monitoring system” or (“CEMS”) respectively, as defined in § 97.202. The owner or operator of a unit that is not a CAIR SO₂ unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR SO₂ unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR SO₂ unit shall:

(1) Install all monitoring systems required under this subpart for monitoring SO₂ mass emissions and individual unit heat input (including all systems required to monitor SO₂ concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 97.271 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems

under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR SO₂ unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a CAIR SO₂ unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR SO₂ unit for which construction of a new stack or flue or installation of add-on SO₂ emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO₂ emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, by the date specified in § 97.284(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a CAIR SO₂ opt-in unit under subpart III of this part, by the date on which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program as provided in § 97.284(g).

(c) *Reporting data.* The owner or operator of a CAIR SO₂ unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for SO₂ concentration, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO₂ mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CAIR SO₂ unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.275.

(2) No owner or operator of a CAIR SO₂ unit shall operate the unit so as to discharge, or allow to be discharged, SO₂ emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR SO₂ unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO₂ mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR SO₂ unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.205 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.271(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR SO₂ unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 97.271 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR SO₂ unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.270(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B and appendix D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.270(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) [Reserved]

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR SO₂ unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 97.270(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted

monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.270(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.270(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.270(a)(1) that may significantly affect the ability of the system to accurately measure or record SO₂ mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 97.270(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 97.270(a)(1). For recertifications, replace the words “certification” and “initial certification” with the word “recertification”, replace the word “certified” with the word “recertified,” and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.273.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR SO₂ Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete cer-

tification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR SO₂ Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each

monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.272(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(1) For a disapproved SO₂ pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO₂ and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(2) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(3) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 97.272 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D of appendix D to part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.271 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the

notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.271 for each disapproved monitoring system.

§ 97.273 Notifications.

The CAIR designated representative for a CAIR SO₂ unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter. § 97.274 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 97.210(e)(1).

(b) *Monitoring Plans.* The owner or operator of a CAIR SO₂ unit shall comply with requirements of § 75.62 of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, §§ 97.283 and 97.284(a).

(c) *Certification Applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.271, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the SO₂ mass emissions data and heat input data for the CAIR SO₂ unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009;

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.270(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009;

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the calendar quarter corresponding to the date specified in § 97.284(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR SO₂ opt-in unit under subpart III of this part, the calendar quarter corresponding to the date on which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program as provided in § 97.284(g).

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.64 of this chapter.

(3) For CAIR SO₂ units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program, CAIR NO_x Ozone Season Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the SO₂ mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of

Environmental Protection Agency

§ 97.283

the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on SO₂ emission controls and for all hours where SO₂ data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate SO₂ emissions.

§ 97.275 Petitions.

The CAIR designated representative of a CAIR SO₂ unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

Subpart III—CAIR SO₂ Opt-in Units

§ 97.280 Applicability.

A CAIR SO₂ opt-in unit must be a unit that:

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.124(r)(1), (2), or (3) of this chapter establishing procedures concerning CAIR opt-in units;

(b) Is not a CAIR SO₂ unit under § 97.204 and is not covered by a retired unit exemption under § 97.205 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect and is not an opt-in source under part 74 of this chapter;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§ 97.281 General.

(a) Except as otherwise provided in §§ 97.201 through 97.204, §§ 97.206 through 97.208, and subparts BBB and CCC and subparts FFF through HHH of this part, a CAIR SO₂ opt-in unit shall be treated as a CAIR SO₂ unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR SO₂ unit before issuance of a CAIR opt-in permit for such unit.

§ 97.282 CAIR designated representative.

Any CAIR SO₂ opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR SO₂ units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO₂ units.

§ 97.283 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR SO₂ opt-in unit in § 97.280 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.286(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.222;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR SO₂ unit under § 97.204 and is not covered by a retired unit exemption under § 97.205 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Is not, and so long as the unit is a CAIR SO₂ opt-in unit, will not become, an opt-in source under part 74 of this chapter;

(iv) Vents all of its emissions to a stack, and

(v) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.222;

(3) A monitoring plan in accordance with subpart HHH of this part;

(4) A complete certificate of representation under § 97.213 consistent with § 97.282, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR SO₂ allowances under § 97.288(b) or § 97.288(c) (subject to the conditions in §§ 97.284(h) and 97.286(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator. If allocation under § 97.288(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR SO₂ opt-in unit shall submit a complete CAIR permit application under § 97.222 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR SO₂ opt-in unit from the CAIR SO₂ Trading Program in accordance with § 97.286 or the unit becomes a CAIR SO₂ unit under § 97.204, the CAIR SO₂ opt-in unit shall remain

subject to the requirements for a CAIR SO₂ opt-in unit, even if the CAIR designated representative for the CAIR SO₂ opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 97.284 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.183 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.283. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the SO₂ emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the SO₂ emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHH of this part and continuing until a CAIR opt-in permit is denied under § 97.284(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR SO₂ Trading Program in accordance with § 97.286.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR SO₂ Trading

Program under § 97.284(g), during which period monitoring system availability must not be less than 90 percent under subpart HHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the SO₂ emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR SO₂ Trading Program under § 97.284(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's SO₂ emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's SO₂ emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section.

(d) *Baseline SO₂ emission rate.* The unit's baseline SO₂ emission rate shall equal:

(1) If the unit's SO₂ emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's SO₂ emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's SO₂ emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on SO₂ emission

controls during any such control periods, the average of the amounts of the unit's SO₂ emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or

(3) If the unit's SO₂ emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on SO₂ emission controls during any such control periods, the average of the amounts of the unit's SO₂ emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on SO₂ emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline SO₂ emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR SO₂ opt-in unit in § 97.280 and meets the elements certified in § 97.283(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR SO₂ opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR SO₂ opt-in unit in § 97.280 or meets the elements certified in § 97.283(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR SO₂ Trading Program.* A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR SO₂ opt-in unit, and a CAIR SO₂ unit, as of the later of January 1, 2010 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR SO₂ opt-in unit.*

(1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO₂ opt-in unit of CAIR SO₂ allowances under § 97.288(c) and such unit is repowered after its date of entry into the CAIR SO₂ Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR SO₂ opt-in unit replacing the original CAIR SO₂ opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline SO₂ emission rate as the original CAIR SO₂ opt-in unit, and the original CAIR SO₂ opt-in unit shall no longer be treated as a CAIR SO₂ opt-in unit or a CAIR SO₂ unit.

§ 97.285 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 97.222;

(2) The certification in § 97.283(a)(2);

(3) The unit's baseline heat input under § 97.284(c);

(4) The unit's baseline SO₂ emission rate under § 97.284(d);

(5) A statement whether the unit is to be allocated CAIR SO₂ allowances under § 97.288(b) or § 97.288(c) (subject to the conditions in §§ 97.284(h) and 97.286(g));

(6) A statement that the unit may withdraw from the CAIR SO₂ Trading Program only in accordance with § 97.286; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.287.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.202 and, upon recordation by the Administrator under subpart FFF or GGG of this part or this subpart, every alloca-

tion, transfer, or deduction of CAIR SO₂ allowances to or from the compliance account of the source that includes a CAIR SO₂ opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR SO₂ opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 97.286 Withdrawal from CAIR SO₂ Trading Program.

Except as provided under paragraph (g) of this section, a CAIR SO₂ opt-in unit may withdraw from the CAIR SO₂ Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit of the acceptance of the withdrawal of the CAIR SO₂ opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR SO₂ opt-in unit from the CAIR SO₂ Trading Program, the CAIR designated representative of the CAIR SO₂ opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR SO₂ Trading Program under § 97.284(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR SO₂ opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR SO₂ Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO₂ opt-in unit must meet the requirement to hold CAIR SO₂ allowances under § 97.206(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of

the source that includes the CAIR SO₂ opt-in unit CAIR SO₂ allowances equal in amount to and allocated for the same or a prior control period as any CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under § 97.288 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO₂ units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR SO₂ opt-in unit may submit a CAIR SO₂ allowance transfer for any remaining CAIR SO₂ allowances to another CAIR SO₂ Allowance Tracking System in accordance with subpart GGG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR SO₂ allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit of the acceptance of the withdrawal of the CAIR SO₂ opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO₂ opt-in unit that the CAIR SO₂ opt-in unit's request to withdraw is denied. Such CAIR SO₂ opt-in unit shall continue to be a CAIR SO₂ opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR SO₂ opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR SO₂ opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR SO₂ Trading Program concerning any control periods for which the unit is a CAIR SO₂ opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR SO₂ opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR SO₂ Trading Program.* Once a CAIR SO₂ opt-in unit withdraws from the CAIR SO₂ Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 97.283 for such CAIR SO₂ opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.284.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR SO₂ opt-in unit shall not be eligible to withdraw from the CAIR SO₂ Trading Program if the CAIR designated representative of the CAIR SO₂ opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR SO₂ opt-in unit of CAIR SO₂ allowances under § 97.288(c).

§ 97.287 Change in regulatory status.

(a) *Notification.* If a CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 97.204, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR SO₂ opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 97.204, the permitting authority will revise the CAIR SO₂ opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.223, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 97.204.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR SO₂ opt-in unit that becomes a CAIR SO₂ unit

under § 97.204, CAIR SO₂ allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under § 97.288 for any control period after the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 97.204; and

(B) If the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 97.204 is not December 31, the CAIR SO₂ allowances allocated to the CAIR SO₂ opt-in unit under § 97.288 for the control period that includes the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 97.204, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO₂ opt-in unit becomes a CAIR SO₂ unit under § 97.204 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR SO₂ unit that becomes a CAIR SO₂ unit under § 97.204 contains the CAIR SO₂ allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

§ 97.288 CAIR SO₂ allowance allocations to CAIR SO₂ opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.284(e), the permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 97.284(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period after the control period in which a CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 97.284(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO₂ opt-in unit, in ac-

cordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(1) The heat input (in mmBtu) used for calculating the CAIR SO₂ allowance allocation will be the lesser of:

(i) The CAIR SO₂ opt-in unit's baseline heat input determined under § 97.284(c); or

(ii) The CAIR SO₂ opt-in unit's heat input, as determined in accordance with subpart HHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under § 97.284(g).

(2) The SO₂ emission rate (in lb/mmBtu) used for calculating CAIR SO₂ allowance allocations will be the lesser of:

(i) The CAIR SO₂ opt-in unit's baseline SO₂ emissions rate (in lb/mmBtu) determined under § 97.284(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal SO₂ emissions limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period for which CAIR SO₂ allowances are to be allocated.

(3) The permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (b)(1) of this section, multiplied by the SO₂ emission rate under paragraph (b)(2) of this section, and divided by 2,000 lb/ton.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 97.283(a)(5)) providing for, allocation to a CAIR SO₂ opt-in unit of CAIR SO₂

allowances under this paragraph (subject to the conditions in §§97.284(h) and 97.286(g)), the permitting authority will allocate to the CAIR SO₂ opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with §51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(1) For each control period in 2010 through 2014 for which the CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances,

(i) The heat input (in mmBtu) used for calculating CAIR SO₂ allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO₂ emission rate (in lb/mmBtu) used for calculating CAIR SO₂ allowance allocations will be the lesser of:

(A) The CAIR SO₂ opt-in unit's baseline SO₂ emissions rate (in lb/mmBtu) determined under §97.284(d); or

(B) The most stringent State or Federal SO₂ emissions limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period in which the CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under §97.284(g).

(iii) The permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(1)(i) of this section, multiplied by the SO₂ emission rate under paragraph (c)(1)(ii) of this section, and divided by 2,000 lb/ton.

(2) For each control period in 2015 and thereafter for which the CAIR SO₂ opt-in unit is to be allocated CAIR SO₂ allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR SO₂ allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO₂ emission rate (in lb/mmBtu) used for calculating the CAIR SO₂ allowance allocation will be the lesser of:

(A) The CAIR SO₂ opt-in unit's baseline SO₂ emissions rate (in lb/mmBtu) determined under §97.284(d) multiplied by 10 percent; or

(B) The most stringent State or Federal SO₂ emissions limitation applicable to the CAIR SO₂ opt-in unit at any time during the control period for which CAIR SO₂ allowances are to be allocated.

(iii) The permitting authority will allocate CAIR SO₂ allowances to the CAIR SO₂ opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(2)(i) of this section, multiplied by the SO₂ emission rate under paragraph (c)(2)(ii) of this section, and divided by 2,000 lb/ton.

(d) *Recordation.* If provided in a State implementation plan revision submitted in accordance with §51.124(r)(1), (2), or (3) of this chapter and approved by the Administrator:

(1) The Administrator will record, in the compliance account of the source that includes the CAIR SO₂ opt-in unit, the CAIR SO₂ allowances allocated by the permitting authority to the CAIR SO₂ opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR SO₂ opt-in unit enters the CAIR SO₂ Trading Program under §97.284(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR SO₂ opt-in unit, the CAIR SO₂ allowances allocated by the permitting authority to the CAIR SO₂ opt-in unit under paragraph (a)(2) of this section.

APPENDIX A TO SUBPART III OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING CAIR SO₂ OPT-IN UNITS

1. The following States have State Implementation Plan revisions under §51.124(r) of this chapter approved by the Administrator and establishing procedures providing for CAIR SO₂ opt-in units under subpart III of this part and allocation of CAIR SO₂ allowances to such units under §97.288(b):

[Reserved]

2. The following States have State Implementation Plan revisions under §51.124(r) of this chapter approved by the Administrator and establishing procedures providing for CAIR SO₂ opt-in units under subpart III of this part and allocation of CAIR SO₂ allowances to such units under §97.288(c):

[Reserved]

Subpart AAAA—CAIR NO_x Ozone Season Trading Program General Provisions

§ 97.301 Purpose.

This subpart and subparts BBBB through IIII set forth the general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the Federal Clean Air Interstate Rule (CAIR) NO_x Ozone Season Trading Program, under section 110 of the Clean Air Act and § 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

§ 97.302 Definitions.

The terms used in this subpart and subparts BBBB through IIII shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_x Ozone Season Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to CAIR NO_x Ozone Season allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO_x Ozone Season allowances to be initially credited to a CAIR NO_x Ozone Season unit, a new unit set-aside, or other entity.

Allowance transfer deadline means, for a control period, midnight of November 30 (if it is a business day), or midnight of the first business day thereafter (if November 30 is not a business day), immediately following the control period and is the deadline by which a CAIR NO_x Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_x Ozone Season source's com-

pliance account in order to be used to meet the source's CAIR NO_x Ozone Season emissions limitation for such control period in accordance with § 97.354.

Alternate CAIR designated representative means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBBB and IIII of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_x Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHHH of this part.

Boiler means an enclosed fossil-or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBBB, FFFF, and IIII of this part, to transfer and otherwise dispose of CAIR NO_x Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BBBB and IIII of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO₂ source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO₂ Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_x Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AA through II of this part and §§51.123(p) and 52.35 of this chapter or

approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and §51.123(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x Ozone Season allowance means a limited authorization issued by a permitting authority or the Administrator under subpart EEEE of this part, §97.388, or provisions of a State implementation plan that are approved under §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Ozone Season Trading Program or a limited authorization issued by a permitting authority for a control period during 2003 through 2008 under the NO_x Budget Trading Program in accordance with §51.121(p) of this chapter to emit one ton of nitrogen oxides during a control period, provided that the provision in §51.121(b)(2)(ii)(E) of this chapter shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance-holding requirement under the NO_x Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under subpart EEEE of this part, §97.388, or provisions of a State implementation plan that are approved under §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter or under the NO_x Budget Trading Program as described in the prior sentence shall not be a CAIR NO_x Ozone Season allowance.

CAIR NO_x Ozone Season allowance deduction or deduct CAIR NO_x Ozone Season allowances means the permanent withdrawal of CAIR NO_x Ozone Season allowances by the Administrator from a compliance account, *e.g.*, in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source for a control period, determined in accordance with subpart HHHH of this part, or to account for excess emissions.

CAIR NO_x Ozone Season Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_x Ozone Season allowances under the CAIR NO_x Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_x Ozone Season Allowance Tracking System account means an account in the CAIR NO_x Ozone Season Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_x Ozone Season allowances.

CAIR NO_x Ozone Season allowances held or hold CAIR NO_x Ozone Season allowances means the CAIR NO_x Ozone Season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFFF, GGGG, and IIII of this part, in a CAIR NO_x Ozone Season Allowance Tracking System account.

CAIR NO_x Ozone Season emissions limitation means, for a CAIR NO_x Ozone Season source, the tonnage equivalent, in NO_x emissions in a control period, of the CAIR NO_x Ozone Season allowances available for deduction for the source under § 97.354(a) and (b) for the control period.

CAIR NO_x Ozone Season source means a source that includes one or more CAIR NO_x Ozone Season units.

CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established by the Administrator in accordance with subparts AAAA through IIII of this part and §§ 51.123(ee) and 52.35 of this chapter or approved and administered by the Administrator in accordance with under subparts AAAA through IIII and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x Ozone Season unit means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under § 97.304 and, except for purposes of § 97.305 and subpart EEEE of this part, a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_x source means a source that is subject to the CAIR NO_x Annual Trading Program.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCCC of this part, including any permit revisions, specifying the CAIR NO_x Ozone Season Trading Program requirements applicable to a CAIR NO_x Ozone Season source, to each CAIR NO_x Ozone Season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO₂ source means a source that is subject to the CAIR SO₂ Trading Program.

CAIR SO₂ Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program established by the Administrator in accordance with subparts AAA through III of this part and §§ 51.124(r) and 52.36 of this chapter or approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and § 51.124(o)(1) or (2) of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

Certifying official means:

(1) For a corporation, a president, secretary, treasurer, or vice-president or the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation;

(2) For a partnership or sole proprietorship, a general partner or the proprietor respectively; or

(3) For a local government entity or State, Federal, or other public agency, a principal executive officer or ranking elected official.

Clean Air Act or *CAA* means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired means:

(1) Except for purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or

(2) For purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.

Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

Commence commercial operation means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to

generate electricity for sale or use, including test generation, except as provided in § 97.305 and § 97.384(h).

(i) For a unit that is a CAIR NO_x Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO_x Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 97.305, for a unit that is not a CAIR NO_x Ozone Season unit under § 97.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under § 97.304.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced

by a unit at the same source (*e.g.*, repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraphs (1) and (2) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 97.384(h).

(i) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is replaced by a unit at the same source (*e.g.*, repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1) or (2) of this definition as appropriate, except as provided in § 97.384(h).

(2) Notwithstanding paragraph (1) of this definition and solely for purposes of subpart HHHH of this part, for a unit that is not a CAIR NO_x Ozone Season unit under § 97.304(d) on the later of November 15, 1990 or the date the unit commences operation as defined in paragraph (1) of this definition and subsequently becomes such a CAIR NO_x Ozone Season unit, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under § 97.304(d).

(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (*e.g.*, repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1) or (2) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_x Ozone Season Allowance Tracking System account, established by the Administrator for a CAIR NO_x Ozone Season source under subpart FFFF or IIII of this part, in which any CAIR NO_x Ozone Season allowance allocations for the CAIR NO_x Ozone Season units at the source are initially recorded and in which are held any CAIR NO_x Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_x Ozone Season emissions limitation in accordance with § 97.354.

Continuous emission monitoring system or *CEMS* means the equipment required under subpart HHHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor

and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO₂ or O₂) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO₂ or O₂, and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H₂O;

(5) A carbon dioxide monitoring system, consisting of a CO₂ pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO₂ concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO₂ emissions, in percent CO₂; and

(6) An oxygen monitoring system, consisting of an O₂ concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O₂, in percent O₂.

Control period or *ozone season* means the period beginning May 1 of a calendar year, except as provided in § 97.306(c)(2) and ending on September 30 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHHH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source during a control period that exceeds the CAIR NO_x Ozone Season emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_x Ozone Season Allowance Tracking System account, established under subpart FFFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in

hr) during which the unit combusts the fuel.

Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance subpart HHHH of part 60 of this chapter and § 60.24(h)(6), or established by the Administrator under section 111 of the Clean Air Act, as a means of reducing national Hg emissions.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

- (1) For the life of the unit;
- (2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
- (3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HHHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_x emissions limitation means, with regard to a unit, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as of such completion as specified by the person conducting the physical change.

Oil-fired means, for purposes of subpart EEEE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.

Operator means any person who operates, controls, or supervises a CAIR NO_x Ozone Season unit or a CAIR NO_x Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit;

(ii) Any holder of a leasehold interest in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit; or

(iii) Any purchaser of power from a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income

from such CAIR NO_x Ozone Season unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_x Ozone Season allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_x Ozone Season Trading Program in accordance with subpart CCCC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to CAIR NO_x Ozone Season allowances, the movement of CAIR NO_x Ozone Season allowances by the Administrator into or between CAIR NO_x Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in (75.22 of this chapter.

Replacement, replace, or replaced means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used

instead of the demolished or shutdown unit (the replaced unit).

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Serial number means, for a CAIR NO_x Ozone Season allowance, the unique identification number assigned to each CAIR NO_x Ozone Season allowance by the Administrator.

Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a "solid waste incineration unit" as defined in section 129(g)(1) of the Clean Air Act.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that is subject to the CAIR NO_x Ozone Season Trading Program pursuant to (52.35 of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) In person;
- (2) By United States Postal Service; or
- (3) By other means of dispatch or transmission and delivery. Compliance with any “submission” or “service” deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_x Ozone Season emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of

useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

- (1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;
- (2) Used in a heating application (*e.g.*, space heating or domestic hot water heating); or
- (3) Used in a space cooling application (*i.e.*, thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 97.303 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart and subparts BBBB through IIII are defined as follows:

Btu—British thermal unit.

CO₂—carbon dioxide.

H₂O—water.

Hg—mercury.

hr—hour.

kW—kilowatt electrical.

kWh—kilowatt hour.

lb—pound.

mmBtu—million Btu.

MWe—megawatt electrical.

MWh—megawatt hour.

NO_x—nitrogen oxides.

O₂—oxygen.

ppm—parts per million.

scfh—standard cubic feet per hour.
SO₂—sulfur dioxide.
yr—year.

§ 97.304 Applicability.

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part: any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit(s) combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_x Ozone Season units:

(1)(i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit(s) potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period

starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2)(i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

(c) A certifying official of an owner or operator of any unit may petition the Administrator at any time for a determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_x Ozone Season Trading Program to the unit.

(1) *Petition content.* The petition shall be in writing and include the identification of the unit and the relevant facts about the unit. The petition and any other documents provided to the Administrator in connection with the petition shall include the following certification statement, signed by the certifying official: “I am authorized to make this submission on behalf of the owners and operators of the unit for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(2) *Submission.* The petition and any other documents provided in connection with the petition shall be submitted to the Director of the Clean Air Markets Division (or its successor), U.S. Environmental Protection Agency, who will act on the petition as the Administrator’s duly authorized representative.

(3) *Response.* The Administrator will issue a written response to the petition and may request supplemental information relevant to such petition. The Administrator’s determination concerning the applicability, under paragraphs (a) and (b) of this section, of the CAIR NO_x Ozone Season Trading Program to the unit shall be binding on the permitting authority unless the petition or other information or documents provided in connection with the petition are found to have contained significant, relevant errors or omissions.

(d) Notwithstanding paragraphs (a) and (b) of this section, if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(1) of this chapter providing for the inclusion in the CAIR NO_x Ozone Season Trading Program of all units that are not otherwise CAIR NO_x Ozone Season units under paragraphs (a) and (b) of this section and that are NO_x Budget units covered by the State’s emissions trading program approved under § 51.121(p) of this chapter, such units shall be CAIR NO_x Ozone Season units as of the first date that they are NO_x Budget units under the NO_x Budget Trading Program under § 51.121(p) of this chapter.

§ 97.305 Retired unit exemption.

(a)(1) Any CAIR NO_x Ozone Season unit that is permanently retired and is not a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part shall be exempt from the CAIR NO_x Ozone Season Trading Program, except for the provisions of this section, §§ 97.302, 97.303, 97.304, 97.306(c)(4) through (7), 97.307, 97.308, and subparts BBBB and EEEE through GGGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_x Ozone Season unit is permanently retired. Within 30 days of the unit’s permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The Administrator or the permitting authority will allocate CAIR NO_x Ozone Season allowances under subpart EEEE of this part to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_x Ozone Season Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 97.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section

to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 97.306 Standard requirements.

(a) *Permit requirements.* (1) The CAIR designated representative of each CAIR NO_x Ozone Season source required to have a title V operating permit and each CAIR NO_x Ozone Season unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 97.322 in accordance with the deadlines specified in § 97.321; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_x Ozone Season source required to have a title V operating permit and each CAIR NO_x Ozone Season unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart IIII of this part, the owners and operators of a CAIR NO_x Ozone Season source that is not otherwise required to have a title V operating permit and each CAIR NO_x Ozone Season unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCCC of this part for such CAIR NO_x Ozone Season source and such CAIR NO_x Ozone Season unit.

(b) *Monitoring, reporting, and record-keeping requirements.* (1) The owners and operators, and the CAIR designated representative, of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHHH of this part shall be used to determine compliance by each CAIR NO_x Ozone Season source with the CAIR NO_x Ozone Season emissions limitation under paragraph (c) of this section.

(c) *Nitrogen oxides ozone season emission requirements.* (1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_x Ozone Season allowances available for compliance deductions for the control period under § 97.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.

(2) A CAIR NO_x Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 97.370(b)(1), (2), (3), or (7) and for each control period thereafter.

(3) A CAIR NO_x Ozone Season allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_x Ozone Season allowance was allocated.

(4) CAIR NO_x Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Ozone Season Allowance Tracking System accounts in accordance with subparts EEEE, FFFF, GGGG, and IIII of this part.

(5) A CAIR NO_x Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accord-

ance with the CAIR NO_x Ozone Season Trading Program. No provision of the CAIR NO_x Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 97.305 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(6) A CAIR NO_x Ozone Season allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart EEEE, FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from a CAIR NO_x Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) *Excess emissions requirements.* If a CAIR NO_x Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR NO_x Ozone Season emissions limitation, then:

(1) The owners and operators of the source and each CAIR NO_x Ozone Season unit at the source shall surrender the CAIR NO_x Ozone Season allowances required for deduction under § 97.354(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 97.313 for the CAIR designated representative for the source and each CAIR NO_x Ozone Season unit at the

source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under §97.313 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHHH of this part, provided that to the extent that subpart HHHH of this part provides for a 3-year period for record-keeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Ozone Season Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Ozone Season Trading Program.

(2) The CAIR designated representative of a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall submit the reports required under the CAIR NO_x Ozone Season Trading Program, including those under subpart HHHH of this part.

(f) *Liability.* (1) Each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit shall meet the requirements of the CAIR NO_x Ozone Season Trading Program.

(2) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season source or the CAIR designated representative of a CAIR NO_x Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO_x Ozone Season units at the source.

(3) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season unit or the CAIR designated representative of a CAIR NO_x Ozone Season unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the CAIR NO_x Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under §97.305 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x Ozone Season source or CAIR NO_x Ozone Season unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§97.307 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Ozone Season Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Ozone Season Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_x Ozone Season Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§97.308 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_x Ozone Season Trading Program are set forth in part 78 of this chapter.

APPENDIX A TO SUBPART Aaaa OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING APPLICABILITY

The following States have State Implementation Plan revisions under §51.123(ee)(1) of this chapter approved by the Administrator and providing for expansion of the applicability provisions to include all non-EGUs subject to the respective State's emission trading program approved under §51.121(p) of this chapter:

[Reserved]

Subpart BBBB—CAIR Designated Representative for CAIR NO_x Ozone Season Sources**§ 97.310 Authorization and responsibilities of CAIR designated representative.**

(a) Except as provided under § 97.311, each CAIR NO_x Ozone Season source, including all CAIR NO_x Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Ozone Season Trading Program concerning the source or any CAIR NO_x Ozone Season unit at the source.

(b) The CAIR designated representative of the CAIR NO_x Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x Ozone Season units at the source and shall act in accordance with the certification statement in § 97.313(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 97.313, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_x Ozone Season source represented and each CAIR NO_x Ozone Season unit at the source in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Ozone Season Allowance Tracking System account will be established for a CAIR NO_x Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under § 97.313 for a CAIR designated representative of the source and the CAIR NO_x Ozone Season units at the source.

(e)(1) Each submission under the CAIR NO_x Ozone Season Trading Pro-

gram shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x Ozone Season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: “I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 97.311 Alternate CAIR designated representative.

(a) A certificate of representation under § 97.313 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 97.313, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 97.302, 97.310(a) and (d), 97.312, 97.313, 97.315, 97.351, and 97.382, whenever the term “CAIR designated representative” is used in subparts AAAA through IIII of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 97.312 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) *Changing CAIR designated representative.* The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.

(b) *Changing alternate CAIR designated representative.* The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit is not included in the list of owners and operators in the certificate of representation under § 97.313, such owner or operator shall be deemed to be subject to and

bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 97.313 amending the list of owners and operators to include the change.

§ 97.313 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR NO_x Ozone Season source, and each CAIR NO_x Ozone Season unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_x Ozone Season source and of each CAIR NO_x Ozone Season unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) “I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x Ozone Season unit at the source.”

(ii) “I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.”

(iii) “I certify that the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit.”

(iv) “Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_x Ozone Season unit, or where a utility or industrial customer purchases power from a CAIR NO_x Ozone Season unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the ‘CAIR designated representative’ or ‘alternate CAIR designated representative’, as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x Ozone Season unit at the source; and CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in proportion to each holder’s legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_x Ozone Season allowances by contract, CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in accordance with the contract.”

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the

permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.314 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 97.313 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.313 is received by the Administrator.

(b) Except as provided in § 97.312(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_x Ozone Season Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.

§ 97.315 Delegation by CAIR designated representative and alternate CAIR designated representative.

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.315(d) shall be deemed to be an electronic submission by me.”

(ii) “Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.315(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.315 is terminated.”

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Admin-

istrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CCCC—Permits

§ 97.320 General CAIR NO_x Ozone Season Trading Program permit requirements.

(a) For each CAIR NO_x Ozone Season source required to have a title V operating permit or required, under subpart IIII of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by § 97.305, this subpart, and subpart IIII of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_x Ozone Season Trading Program, CAIR NO_x Annual Trading Program, and CAIR SO₂ Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 97.321 Submission of CAIR permit applications.

(a) *Duty to apply.* The CAIR designated representative of any CAIR NO_x Ozone Season source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 97.322 for the source covering each CAIR NO_x Ozone Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_x Ozone Season unit commences commercial operation, except as provided in § 97.383(a).

(b) *Duty to reapply.* For a CAIR NO_x Ozone Season source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 97.322 for the source covering each CAIR NO_x Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in § 97.383(b).

§ 97.322 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_x Ozone Season source for which the application is submitted, in a format prescribed by the permitting authority:

- (a) Identification of the CAIR NO_x Ozone Season source;
- (b) Identification of each CAIR NO_x Ozone Season unit at the CAIR NO_x Ozone Season source; and
- (c) The standard requirements under § 97.306.

§ 97.323 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting

authority, all elements required for a complete CAIR permit application under § 97.322.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 97.302 and, upon recordation by the Administrator under subpart EEEE, FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from the compliance account of the CAIR NO_x Ozone Season source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x Ozone Season source's title V operating permit or other federally enforceable permit as applicable.

§ 97.324 CAIR permit revisions.

Except as provided in § 97.323(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDDD [Reserved]

Subpart EEEE—CAIR NO_x Ozone Season Allowance Allocations

§ 97.340 State trading budgets.

(a) Except as provided in paragraph (b) of this section, the State trading budgets for annual allocations of CAIR NO_x Ozone Season allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	32,182	26,818
Arkansas	11,515	9,597
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94

Environmental Protection Agency

§ 97.342

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231
New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989

(b) Upon approval by the Administrator of a State's State implementation plan revision under §51.123(ee)(1) of this chapter providing for the inclusion in the CAIR NO_x Ozone Season Trading Program of all units that are not otherwise CAIR NO_x Ozone Season units under §97.304(a) and (b) and that are NO_x Budget units covered by the State's emissions trading program approved under §51.121(p), the amount in the State trading budget for a control period in a calendar year will be the sum of the amount set forth for the State and for the year in paragraph (a) of this section and the amount of additional CAIR NO_x Ozone Season allowance allocations issued under §51.123(ee)(1)(ii)(A) of this chapter for the year.

§ 97.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations.

(a) The Administrator will determine by order the CAIR NO_x Ozone Season allowance allocations, in accordance with §97.342(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By July 31, 2011 and July 31 of each year thereafter, the Administrator will determine by order the CAIR NO_x Ozone Season allowance allocations, in accordance with §97.342(a) and (b), for the control period in the

fourth year after the year of the applicable deadline for determination under this paragraph.

(c) By April 30, 2009 and April 30 of each year thereafter, the Administrator will determine by order the CAIR NO_x Ozone Season allowance allocations, in accordance with §97.342(a), (c), and (d), for the control period in the year of the applicable deadline for determination under this paragraph.

(d) The Administrator will make available to the public each determination of CAIR NO_x Ozone Season allowances under paragraph (a), (b), or (c) of this section and will provide an opportunity for submission of objections to the determination. Objections shall be limited to addressing whether the determination is in accordance with §97.342. Based on any such objections, the Administrator will adjust each determination to the extent necessary to ensure that it is in accordance with §97.342.

§ 97.342 CAIR NO_x Ozone Season allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations under paragraph (b) of this section for each CAIR NO_x Ozone Season unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2)(i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator), to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more

units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(iii) Gross electrical output and total heat energy under paragraph (a)(2)(ii) of this section will be determined based on the best available data reported to the Administrator for the unit (in a format prescribed by the Administrator).

(3) The Administrator will determine what data are the best available data under paragraph (a)(2) of this section by weighing the likelihood that data are accurate and reliable and giving greater weight to data submitted to a governmental entity in compliance with legal requirements or substantiated by an independent entity.

(b)(1) For each control period in 2009 and thereafter, the Administrator will allocate to all CAIR NO_x Ozone Season units in a State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the applicable State trading budget under § 97.340 (except as

provided in paragraphs (d) and (e) of this section).

(2) The Administrator will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the Administrator will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in a State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following procedures:

(1) The Administrator will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the applicable State trading budget under § 97.340.

(2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the Administrator a request, in a format specified by the Administrator, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR

NO_x Ozone Season allowances are sought must be submitted on or before February 1 before such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit(s) total tons of NO_x emissions during the control period immediately before such control period.

(4) The Administrator will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

(i) The Administrator will accept an allowance allocation request only if the request meets, or is adjusted by the Administrator as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the Administrator will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the Administrator will allocate to each CAIR NO_x Ozone Season unit covered by an allowance

allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The Administrator will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside under paragraph (c) of this section for a State for the control period, the Administrator will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section in the State an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the applicable State trading budget under § 97.340, and rounded to the nearest whole allowance as appropriate.

(e) If the Administrator determines that CAIR NO_x Ozone Season allowances were allocated under paragraphs (a) and (b) of this section, paragraphs (a) and (c) of this section, or paragraph (d) of this section for a control period and that the recipient of the allocation is not actually a CAIR NO_x Ozone Season unit under § 97.304 in such control period, then the Administrator will notify the CAIR designated representative and will act in accordance with the following procedures:

(1) Except as provided in paragraph (e)(2) or (3) of this section, the Administrator will not record such CAIR NO_x Ozone Season allowances under § 97.353.

(2) If the Administrator already recorded such CAIR NO_x Ozone Season allowances under § 97.353 and if the Administrator makes such determinations before making deductions for the source that includes such recipient under § 97.354(b) for the control period, then the Administrator will deduct from the account in which such CAIR NO_x Ozone Season allowances were recorded under § 97.353 an amount of CAIR NO_x Ozone Season allowances allocated for the same or a prior control period equal to the amount of such already recorded CAIR NO_x Ozone Season allowances. The CAIR designated representative shall ensure that there are sufficient CAIR NO_x Ozone Season allowances in such account for completion of the deduction.

(3) If the Administrator already recorded such CAIR NO_x Ozone Season allowances under § 97.353 and if the Administrator makes such determinations after making deductions for the source that includes such recipient under § 97.354(b) for the control period, then the Administrator will apply paragraph (e)(1) or (2) of this section, as appropriate, to any subsequent control period for which CAIR NO_x Ozone Season allowances were allocated to such recipient.

(4) The Administrator will transfer the CAIR NO_x Ozone Season allowances that are not recorded, or that are deducted, in accordance with paragraphs (e)(1), (2), and (3) of this section to a new unit set-aside for the State in which such recipient is located.

§ 97.343 Alternative of allocation of CAIR NO_x Ozone Season allowances by permitting authority.

(a) Notwithstanding §§ 97.341, 97.342, and 97.353 if a State submits, and the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(2) of this chapter providing for allocation of CAIR NO_x Ozone Season allowances by the permitting authority, then the permitting authority shall make such allocations in accordance with such approved State implementation plan revision,

Environmental Protection Agency

§ 97.351

the Administrator will not make allocations under §§ 97.341 and 97.342 for the CAIR NO_x Ozone Season units in the State, and under § 97.353, the Administrator will record allocations made under such approved State implementation plan revision instead of allocations under §§ 97.341 and 97.342.

(b) In implementing paragraph(a) of this section and §§ 97.341, 97.342, and 97.353, the Administrator will ensure that the total amount of CAIR NO_x Ozone Season allowances allocated, under such provisions and under a State's State implementation plan revision approved in accordance with § 51.123(ee)(2) of this chapter, for a control period for CAIR NO_x Ozone Season sources in the State or for other entities specified by the permitting authority will not exceed the State's State trading budget for the year of the control period.

APPENDIX A TO SUBPART EEEEE OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING ALLOCATIONS

The following States have State Implementation Plan revisions under § 51.123(ee)(2) of this chapter approved by the Administrator and providing for allocation of CAIR NO_x Ozone Season allowances by the permitting authority under § 97.344(a):

[Reserved]

Subpart FFFF—CAIR NO_x Ozone Season Allowance Tracking System

§ 97.350 [Reserved]

§ 97.351 Establishment of accounts.

(a) *Compliance accounts.* Except as provided in § 97.384(e), upon receipt of a complete certificate of representation under § 97.313, the Administrator will establish a compliance account for the CAIR NO_x Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_x Ozone Season allowances. An application for a general account may designate one and only one CAIR

authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the CAIR authorized account representative and

any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of CAIR authorized account representative and alternate CAIR authorized account representative.*

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an

ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: “I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) *Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.* (i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general

account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account to include the change.

(4) *Objections concerning CAIR authorized account representative and alternate CAIR authorized account representative.*

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x Ozone Season Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.

(5) *Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.* (i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.

(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.

(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, e-mail address, telephone number, and facsimile

transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;

(B) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an “agent”);

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: “I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.351(b)(5)(iv) shall be deemed to be an electronic submission by me.”; and

(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.351(b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 97.351(b)(5) is terminated.”.

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or

eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 97.352 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_x Ozone Season Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_x Ozone Season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 97.353 Recordation of CAIR NO_x Ozone Season allowance allocations.

(a) By September 30, 2007, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control period in 2009.

(b) By September 30, 2008, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control period in 2010.

(c) By September 30, 2009, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR Ozone Season NO_x allowances allocated for the CAIR NO_x Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control periods in 2011, 2012, and 2013.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source in accordance with § 97.342(a) and (b) for the control period in the fourth year after the year of the applicable deadline for recordation under this paragraph.

(e) By September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source in accordance with § 97.342(a) and (c) for the control period in the year of the applicable deadline for recordation under this paragraph.

(f) *Serial numbers for allocated CAIR NO_x Ozone Season allowances.* When recording the allocation of CAIR NO_x Ozone Season allowances for a CAIR NO_x Ozone Season unit in a compliance account, the Administrator will assign each CAIR NO_x Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_x Ozone Season allowance is allocated.

§ 97.354 Compliance with CAIR NO_x emissions limitation.

(a) *Allowance transfer deadline.* The CAIR NO_x Ozone Season allowances are available to be deducted for compliance with a source's CAIR NO_x Ozone Season emissions limitation for a control period in a given calendar year only if the CAIR NO_x Ozone Season allowances:

(1) Were allocated for the control period in the year or a prior year; and

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_x Ozone Season allowance transfer correctly submitted for recordation under 97.360 and 97.361 by the allowance transfer deadline for the control period.

(b) *Deductions for compliance.* Following the recordation, in accordance with § 97.361, of CAIR NO_x Ozone Season

allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_x Ozone Season allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_x Ozone Season emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_x Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HHHH of this part, from all CAIR NO_x Ozone Season units at the source for the control period; or

(2) If there are insufficient CAIR NO_x Ozone Season allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_x Ozone Season allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of CAIR NO_x Ozone Season allowances by serial number.* The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x Ozone Season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_x Ozone Season source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct CAIR NO_x Ozone Season allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_x Ozone Season allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO_x Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then

§ 97.355

40 CFR Ch. I (7–1–06 Edition)

(ii) Any CAIR NO_x Ozone Season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GGGG of this part, in the order of recordation.

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_x Ozone Season source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_x Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_x Ozone Season source or the CAIR NO_x Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart IIII.

(f) *Administrator(s) action on submissions.* (1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_x Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_x Ozone Season allowances from or transfer CAIR NO_x Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 97.355 Banking.

(a) CAIR NO_x Ozone Season allowances may be banked for future use or transfer in a compliance account or a

general account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_x Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x Ozone Season allowance is deducted or transferred under § 97.342, § 97.354, § 97.356, or subpart GGGG or IIII of this part.

§ 97.356 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_x Ozone Season Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 97.357 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§ 97.360 and 97.361 for any CAIR NO_x Ozone Season allowances in the account to one or more other CAIR NO_x Ozone Season Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x Ozone Season allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_x Ozone Season allowances into the account under §§ 97.360 and 97.361 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGGG—CAIR NO_x Ozone Season Allowance Transfers**§ 97.360 Submission of CAIR NO_x Ozone Season allowance transfers.**

A CAIR authorized account representative seeking recordation of a CAIR NO_x Ozone Season allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_x Ozone Season allowance transfer shall include the following elements, in a format specified by the Administrator:

- (a) The account numbers for both the transferor and transferee accounts;
- (b) The serial number of each CAIR NO_x Ozone Season allowance that is in the transferor account and is to be transferred; and
- (c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 97.361 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_x Ozone Season allowance transfer, the Administrator will record a CAIR NO_x Ozone Season allowance transfer by moving each CAIR NO_x Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:

- (1) The transfer is correctly submitted under § 97.360; and
- (2) The transferor account includes each CAIR NO_x Ozone Season allowance identified by serial number in the transfer.

(b) A CAIR NO_x Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_x Ozone Season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 97.354 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR NO_x Ozone Season allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Ad-

ministrator will not record such transfer.

§ 97.362 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a CAIR NO_x Ozone Season allowance transfer under § 97.361, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a CAIR NO_x Ozone Season allowance transfer that fails to meet the requirements of § 97.361(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

- (1) A decision not to record the transfer, and
- (2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR NO_x Ozone Season allowance transfer for recordation following notification of non-recordation.

Subpart HHHH—Monitoring and Reporting**§ 97.370 General requirements.**

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_x Ozone Season unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 97.302 and in § 72.2 of this chapter shall apply, and the terms “affected unit,” “designated representative,” and “continuous emission monitoring system” (or “CEMS”) in part 75 of this chapter shall be deemed to refer to the terms “CAIR NO_x Ozone Season unit,” “CAIR designated representative,” and “continuous emission monitoring system” (or “CEMS”) respectively, as defined in § 97.302. The owner or operator of a unit that is not a CAIR NO_x Ozone Season unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same

monitoring, recordkeeping, and reporting requirements as a CAIR NO_x Ozone Season unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each CAIR NO_x Ozone Season unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input (including all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO₂ or O₂ concentration, and fuel flow rate, as applicable, in accordance with §§75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under §97.371 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation before July 1, 2007, by May 1, 2008.

(2) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under §97.374(d), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

(ii) May 1, 2008.

(3) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on a control period basis under

§97.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

(ii) If the compliance date under paragraph (b)(3)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(3)(i) of this section.

(4) For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (6), or (7) of this section and that reports on an annual basis under §97.374(d), by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.

(5) For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (3), (6), or (7) of this section and that reports on a control period basis under §97.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls; or

(ii) If the compliance date under paragraph (b)(5)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(5)(i) of this section.

(6) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a unit for which a CAIR NO_x Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, by the date specified in §97.384(b).

(7) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this

section, for the owner or operator of a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part, by the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in § 97.384(g).

(c) *Reporting data.* The owner or operator of a CAIR NO_x Ozone Season unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_x mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a CAIR NO_x Ozone Season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.375.

(2) No owner or operator of a CAIR NO_x Ozone Season unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR NO_x Ozone Season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR NO_x Ozone Season unit shall retire or

permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.305 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.371(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a CAIR NO_x Ozone Season unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 97.371 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR NO_x Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 97.370(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.370(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under

§ 75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 97.375 to determine whether the approval applies under the CAIR NO_x Ozone Season Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_x Ozone Season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (*i.e.*, a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 97.370(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.370(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.370(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.370(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the

monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: Replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter systems, and any excepted NO_x monitoring system under appendix E to part 75 of this chapter, under § 97.370(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 97.370(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) *Notification of certification.* The CAIR designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.373.

(ii) *Certification application.* The CAIR designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this

chapter. A provisionally certified monitoring system may be used under the CAIR NO_x Ozone Season Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_x Ozone Season Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the Adminis-

trator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.372(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(1) For a disapproved NO_x emission rate (*i.e.*, NO_x-diluent) system, the maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.

(2) For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x

and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO₂ concentration or the minimum potential O₂ concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(4) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(5) For a disapproved excepted NO_x monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) *Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter.* The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) *Certification/recertification procedures for alternative monitoring systems.* The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Admin-

istrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 97.372 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.371 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.371 for each disapproved monitoring system.

§ 97.373 Notifications.

The CAIR designated representative for a CAIR NO_x Ozone Season unit

shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.374 Recordkeeping and reporting.

(a) *General provisions.* The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 97.310(e)(1).

(b) *Monitoring Plans.* The owner or operator of a CAIR NO_x Ozone Season unit shall comply with requirements of § 75.73 (c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, §§ 97.383 and 97.384(a).

(c) *Certification Applications.* The CAIR designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.371, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The CAIR designated representative shall submit quarterly reports, as follows:

(1) If the CAIR NO_x Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this subpart, the CAIR designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_x mass emissions) for such unit for the entire year and shall report the NO_x mass emissions data and heat input data for such unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification

under § 97.370(b), unless that quarter is the third or fourth quarter of 2007 or the first quarter of 2008, in which case reporting shall commence in the quarter covering May 1, 2008 through June 30, 2008;

(iii) Notwithstanding paragraphs (d)(1) (i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 97.384(b); and

(iv) Notwithstanding paragraphs (d)(1) (i) and (ii) of this section, for a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in § 97.384(g).

(2) If the CAIR NO_x Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation, then the CAIR designated representative shall either:

(i) Meet the requirements of subpart H of part 75 (concerning monitoring of NO_x mass emissions) for such unit for the entire year and report the NO_x mass emissions data and heat input data for such unit in accordance with paragraph (d)(1) of this section; or

(ii) Meet the requirements of subpart H of part 75 for the control period (including the requirements in § 75.74(c) of this chapter) and report NO_x mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year and report, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(A) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(B) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.370(b), unless that date is not

during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date;

(C) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 97.384(b); and

(D) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in § 97.384(g).

(3) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(4) For CAIR NO_x Ozone Season units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program, CAIR SO₂ Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_x mass emission data, heat input data, and other information required by this subpart.

(e) *Compliance certification.* The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;

(2) For a unit with add-on NO_x emission controls and for all hours where NO_x data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions; and

(3) For a unit that is reporting on a control period basis under paragraph (d)(2)(ii) of this section, the NO_x emission rate and NO_x concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

§ 97.375 Petitions.

The CAIR designated representative of a CAIR NO_x Ozone Season unit may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

Subpart IIII—CAIR NO_x Ozone Season Opt-in Units

§ 97.380 Applicability.

A CAIR NO_x Ozone Season opt-in unit must be a unit that:

(a) Is located in a State that submits, and for which the Administrator approves, a State implementation plan revision in accordance with § 51.123(ee)(3) (i), (ii), or (iii) of this chapter establishing procedures concerning CAIR Ozone Season opt-in units;

(b) Is not a CAIR NO_x Ozone Season unit under § 97.304 and is not covered by a retired unit exemption under § 97.305 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHHH of this part.

§ 97.381 General.

(a) Except as otherwise provided in §§ 97.301 through 97.304, §§ 97.306 through 97.308, and subparts BBBB and CCCC and subparts FFFF through HHHH of this part, a CAIR NO_x Ozone Season opt-in unit shall be treated as a CAIR NO_x Ozone Season unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_x Ozone Season unit before issuance of a CAIR opt-in permit for such unit.

§ 97.382 CAIR designated representative.

Any CAIR NO_x Ozone Season opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_x Ozone Season units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x Ozone Season units.

§ 97.383 Applying for CAIR opt-in permit.

(a) *Applying for initial CAIR opt-in permit.* The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x Ozone Season opt-in unit in § 97.380 may apply for an initial CAIR opt-in permit at any time, except as provided under § 97.386 (f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 97.322;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR NO_x Ozone Season unit under § 97.304 and is not covered by a retired unit exemption under § 97.305 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Vents all of its emissions to a stack; and

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 97.322;

(3) A monitoring plan in accordance with subpart HHHH of this part;

(4) A complete certificate of representation under § 97.313 consistent with § 97.382, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x Ozone Season allowances under § 97.380(b) or § 97.388(c) (subject to the conditions in §§ 97.384(h) and 97.386(g)), to the extent such allocation is provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator. If allocation under § 97.388(c) is requested, this statement shall include a statement that the owners and operators intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

(b) *Duty to reapply.* (1) The CAIR designated representative of a CAIR NO_x Ozone Season opt-in unit shall submit a complete CAIR permit application under § 97.322 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_x Ozone Season opt-in unit from the CAIR NO_x Ozone Season Trading Program in accordance with § 97.386 or the unit becomes a CAIR NO_x Ozone Season unit

under § 97.304, the CAIR NO_x Ozone Season opt-in unit shall remain subject to the requirements for a CAIR NO_x Ozone Season opt-in unit, even if the CAIR designated representative for the CAIR NO_x Ozone Season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 97.384 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 97.383 is submitted in accordance with the following, to the extent provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(a) *Interim review of monitoring plan.* The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 97.383. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) *Monitoring and reporting.* (1)(i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_x emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHHH of this part and continuing until a CAIR opt-in permit is denied under § 97.384(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x Ozone Season Trading Program in accordance with § 97.386.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_x Ozone Season Trading Program under § 97.384(g), during which period monitoring system availability must not be less than 90 percent under subpart HHHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the NO_x emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_x Ozone Season Trading Program under § 97.384(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) *Baseline heat input.* The unit's baseline heat rate shall equal:

(1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section.

(d) *Baseline NO_x emission rate.* The unit's baseline NO_x emission rate shall equal:

(1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_x emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (2) of this section; or

(3) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_x emission controls.

(e) *Issuance of CAIR opt-in permit.* After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in § 97.380 and meets the elements certified in § 97.383(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_x Ozone Season opt-in unit unless the source already has a compliance account.

(f) *Issuance of denial of CAIR opt-in permit.* Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in § 97.380 or meets the elements certified in § 97.383(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) *Date of entry into CAIR NO_x Ozone Season Trading Program.* A unit for which an initial CAIR opt-in permit is

issued by the permitting authority shall become a CAIR NO_x Ozone Season opt-in unit, and a CAIR NO_x Ozone Season unit, as of the later of May 1, 2009 or May 1 of the first control period during which such CAIR opt-in permit is issued.

(h) *Repowered CAIR NO_x Ozone Season opt-in unit.* (1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under § 97.388(c) and such unit is repowered after its date of entry into the CAIR NO_x Ozone Season Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_x Ozone Season opt-in unit replacing the original CAIR NO_x Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_x emission rate as the original CAIR NO_x Ozone Season opt-in unit, and the original CAIR NO_x Ozone Season opt-in unit shall no longer be treated as a CAIR NO_x Ozone Season opt-in unit or a CAIR NO_x Ozone Season unit.

§ 97.385 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 97.322;

(2) The certification in § 97.383(a)(2);

(3) The unit's baseline heat input under § 97.384(c);

(4) The unit's baseline NO_x emission rate under § 97.384(d);

(5) A statement whether the unit is to be allocated CAIR NO_x Ozone Season allowances under § 97.388(b) or § 97.388(c) (subject to the conditions in §§ 97.384(h) and 97.386(g));

(6) A statement that the unit may withdraw from the CAIR NO_x Ozone Season Trading Program only in accordance with § 97.386; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 97.387.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 97.302 and, upon recordation by the Administrator under subpart FFFF or GGGG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_x Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_x Ozone Season opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_x Ozone Season opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 97.386 Withdrawal from CAIR NO_x Ozone Season Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_x Ozone Season opt-in unit may withdraw from the CAIR NO_x Ozone Season Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit in accordance with paragraph (d) of this section.

(a) *Requesting withdrawal.* In order to withdraw a CAIR NO_x Ozone Season opt-in unit from the CAIR NO_x Ozone Season Trading Program, the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least 4 years after September 30 of the year of entry into the CAIR NO_x Ozone Season Trading Program under § 97.384(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) *Conditions for withdrawal.* Before a CAIR NO_x Ozone Season opt-in unit covered by a request under paragraph (a) of this section may withdraw from

the CAIR NO_x Ozone Season Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x Ozone Season opt-in unit must meet the requirement to hold CAIR NO_x Ozone Season allowances under § 97.306(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit CAIR NO_x Ozone Season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 97.388 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_x Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_x Ozone Season opt-in unit may submit a CAIR NO_x Ozone Season allowance transfer for any remaining CAIR NO_x Ozone Season allowances to another CAIR NO_x Ozone Season Allowance Tracking System in accordance with subpart GGGG of this part.

(c) *Notification.* (1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_x Ozone Season allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit that the CAIR NO_x Ozone Season

opt-in unit's request to withdraw is denied. Such CAIR NO_x Ozone Season opt-in unit shall continue to be a CAIR NO_x Ozone Season opt-in unit.

(d) *Permit amendment.* After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_x Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_x Ozone Season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_x Ozone Season Trading Program concerning any control periods for which the unit is a CAIR NO_x Ozone Season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) *Reapplication upon failure to meet conditions of withdrawal.* If the permitting authority denies the CAIR NO_x Ozone Season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) *Ability to reapply to the CAIR NO_x Ozone Season Trading Program.* Once a CAIR NO_x Ozone Season opt-in unit withdraws from the CAIR NO_x Ozone Season Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 97.383 for such CAIR NO_x Ozone Season opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 97.384.

(g) *Inability to withdraw.* Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_x Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR NO_x Ozone Season Trading Program if the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allo-

cation to the CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under § 97.388(c).

§ 97.387 Change in regulatory status.

(a) *Notification.* If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_x Ozone Season opt-in unit's regulatory status, within 30 days of such change.

(b) *Permitting authority's and Administrator's actions.* (1) If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304, the permitting authority will revise the CAIR NO_x Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 97.323, and remove the CAIR opt-in permit provisions, as of the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304.

(2)(i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit that becomes a CAIR NO_x Ozone Season unit under § 97.304, CAIR NO_x Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 97.388 for any control period after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304; and

(B) If the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304 is not September 30, the CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 97.388 for the control period that includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304 divided by

the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_x Ozone Season unit that becomes a CAIR NO_x Ozone Season unit under § 97.304 contains the CAIR NO_x Ozone Season allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3)(i) For every control period after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304, the CAIR NO_x Ozone Season opt-in unit will be allocated CAIR NO_x Ozone Season allowances under § 97.342.

(ii) If the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304 is not September 30, the following amount of CAIR NO_x Ozone Season allowances will be allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under § 97.342 for the control period that includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304:

(A) The amount of CAIR NO_x Ozone Season allowances otherwise allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under § 97.342 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 97.304, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 97.388 CAIR NO_x Ozone Season allowance allocations to CAIR NO_x Ozone Season opt-in units.

(a) *Timing requirements.* (1) When the CAIR opt-in permit is issued under § 97.384(e), the permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_x

Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 97.384(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than July 31 of the control period after the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 97.384(g) and July 31 of each year thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_x Ozone Season opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) *Calculation of allocation.* For each control period for which a CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances, the permitting authority will allocate in accordance with the following procedures, if provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:

(i) The CAIR NO_x Ozone Season opt-in unit's baseline heat input determined under § 97.384(c); or

(ii) The CAIR NO_x Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 97.384(g).

(2) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:

(i) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 97.384(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period for which CAIR NO_x Ozone Season allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_x emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under § 97.383 (a)(5)) providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under this paragraph (subject to the conditions in §§ 97.384(h) and 97.386(g)), the permitting authority will allocate to the CAIR NO_x Ozone Season opt-in unit as follows, if provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) For each control period in 2009 through 2014 for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:

(A) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 97.384(d); or

(B) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR

NO_x Ozone Season Trading Program under § 97.384(g).

(iii) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_x emission rate (in lb/mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:

(A) 0.15 lb/mmBtu;

(B) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 97.384(d); or

(C) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period for which CAIR NO_x Ozone Season allowances are to be allocated.

(iii) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) *Recordation.* If provided in a State implementation plan revision submitted in accordance with § 51.123(ee)(3)(i), (ii), or (iii) of this chapter and approved by the Administrator:

(1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x

Ozone Season opt-in unit under paragraph (a)(1) of this section.

(2) By September 1 of the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 97.384(g) and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x Ozone Season opt-in unit under paragraph (a)(2) of this section.

APPENDIX A TO SUBPART IIII OF PART 97—STATES WITH APPROVED STATE IMPLEMENTATION PLAN REVISIONS CONCERNING CAIR NO_x OZONE SEASON OPT-IN UNITS

1. The following States have State Implementation Plan revisions under § 51.123(ee)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_x Ozone Season opt-in units under subpart IIII of this part and allocation of CAIR NO_x Ozone Season allowances to such units under § 97.388(b):

[Reserved]

2. The following States have State Implementation Plan revisions under § 51.123(ee)(3) of this chapter approved by the Administrator and establishing procedures providing for CAIR NO_x Ozone Season opt-in units under subpart IIII of this part and allocation of CAIR NO_x Ozone Season allowances to such units under § 97.388(c):

[Reserved]

APPENDIX A TO PART 97—FINAL SECTION 126 RULE: EGU ALLOCATIONS, 2004–2007

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
DC	BENNING	603	15	80
DC	BENNING	603	16	117
DE	CHRISTIANA SUB	591	11	5
DE	CHRISTIANA SUB	591	14	5
DE	DELAWARE CITY	52193	B4	141
DE	DELAWARE CITY	52193	ST	155
DE	DELAWARE CITY	52193	ST	159
DE	DELAWARE CITY	52193	ST	158
DE	EDGE MOOR	593	3	234
DE	EDGE MOOR	593	4	401
DE	EDGE MOOR	593	5	602
DE	HAY ROAD	7153	**3	184
DE	HAY ROAD	7153	—1	235
DE	HAY ROAD	7153	—2	207
DE	INDIAN RIVER	594	1	187
DE	INDIAN RIVER	594	2	194
DE	INDIAN RIVER	594	3	369
DE	INDIAN RIVER	594	4	729
DE	MCKEE RUN	599	3	119
DE	VAN SANT STATION	7318	**11	7
IN	ANDERSON	7336	—ACT1	5
IN	ANDERSON	7336	—ACT2	5
IN	CLIFTY CREEK	983	1	558
IN	CLIFTY CREEK	983	2	543
IN	CLIFTY CREEK	983	3	564
IN	CLIFTY CREEK	983	4	525
IN	CLIFTY CREEK	983	5	561
IN	CLIFTY CREEK	983	6	509
IN	CONNERSVILLE	1002	1	1
IN	CONNERSVILLE	1002	2	1
IN	GALLAGHER	1008	1	290
IN	GALLAGHER	1008	2	276
IN	GALLAGHER	1008	3	347
IN	GALLAGHER	1008	4	329
IN	NOBLESVILLE	1007	1	48
IN	NOBLESVILLE	1007	2	45
IN	NOBLESVILLE	1007	3	45
IN	RICHMOND	7335	—RCT1	5
IN	RICHMOND	7335	—RCT2	5
IN	TANNERS CREEK	988	U1	297
IN	TANNERS CREEK	988	U2	235

Environmental Protection Agency

Pt. 97, App. A

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
IN	TANNERS CREEK	988	U3	387
IN	TANNERS CREEK	988	U4	906
IN	WHITEWATER VALLEY	1040	1	74
IN	WHITEWATER VALLEY	1040	2	173
KY	BIG SANDY	1353	BSU1	565
KY	BIG SANDY	1353	BSU2	1,741
KY	CANE RUN	1363	4	397
KY	CANE RUN	1363	5	332
KY	CANE RUN	1363	6	430
KY	COOPER	1384	1	183
KY	COOPER	1384	2	367
KY	DALE	1385	3	161
KY	DALE	1385	4	158
KY	E W BROWN	1355	1	193
KY	E W BROWN	1355	10	37
KY	E W BROWN	1355	2	317
KY	E W BROWN	1355	3	863
KY	E W BROWN	1355	8	34
KY	E W BROWN	1355	9	34
KY	E.W. BROWN	1355	11	21
KY	EAST BEND	6018	2	1,413
KY	GHENT	1356	1	1,232
KY	GHENT	1356	2	1,081
KY	GHENT	1356	3	1,104
KY	GHENT	1356	4	1,132
KY	H L SPURLOCK	6041	1	697
KY	H L SPURLOCK	6041	2	1,589
KY	MILL CREEK	1364	1	528
KY	MILL CREEK	1364	2	600
KY	MILL CREEK	1364	3	941
KY	MILL CREEK	1364	4	1,096
KY	PADDY'S RUN	1366	12	8
KY	PINEVILLE	1360	3	67
KY	TRIMBLE COUNTY	6071	1	1,221
KY	TYRONE	1361	1	3
KY	TYRONE	1361	2	3
KY	TYRONE	1361	3	3
KY	TYRONE	1361	4	3
KY	TYRONE	1361	5	117
MD	BRANDON SHORES	602	1	1,827
MD	BRANDON SHORES	602	2	1,713
MD	C P CRANE	1552	1	434
MD	C P CRANE	1552	2	463
MD	CHALK POINT	1571	—GT2	1
MD	CHALK POINT	1571	—GT3	36
MD	CHALK POINT	1571	—GT4	39
MD	CHALK POINT	1571	—GT5	55
MD	CHALK POINT	1571	—GT6	60
MD	CHALK POINT	1571	—SGT1	24
MD	CHALK POINT	1571	1	833
MD	CHALK POINT	1571	2	861
MD	CHALK POINT	1571	3	585
MD	CHALK POINT	1571	4	522
MD	DICKERSON	1572	—GT2	36
MD	DICKERSON	1572	—GT3	66
MD	DICKERSON	1572	1	447
MD	DICKERSON	1572	2	441
MD	DICKERSON	1572	3	481
MD	GOULD STREET	1553	3	81
MD	HERBERT A WAGNER	1554	1	134
MD	HERBERT A WAGNER	1554	2	399
MD	HERBERT A WAGNER	1554	3	723
MD	HERBERT A WAGNER	1554	4	301
MD	MORGANTOWN	1573	—GT3	9
MD	MORGANTOWN	1573	—GT4	9
MD	MORGANTOWN	1573	—GT5	9
MD	MORGANTOWN	1573	—GT6	8
MD	MORGANTOWN	1573	1	1,151
MD	MORGANTOWN	1573	2	1,375
MD	PANDA BRANDYWINE	54832	1	95
MD	PANDA BRANDYWINE	54832	2	84
MD	PERRYMAN	1556	**51	56
MD	PERRYMAN	1556	—GT1	8

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
MD	PERRYMAN	1556	—GT2	9
MD	PERRYMAN	1556	—GT3	6
MD	PERRYMAN	1556	—GT4	10
MD	R P SMITH	1570	11	143
MD	R P SMITH	1570	9	11
MD	RIVERSIDE	1559	—GT6	11
MD	RIVERSIDE	1559	4	40
MD	VIENNA	1564	8	169
MD	WESTPORT	1560	—GT5	28
MI	ADA COGEN LTD	10819	CA_Ltd	23
MI	BELLE RIVER	6034	1	1,589
MI	BELLE RIVER	6034	2	1,672
MI	DAN E KARN	1702	1	552
MI	DAN E KARN	1702	2	530
MI	DAN E KARN	1702	3	288
MI	DAN E KARN	1702	4	310
MI	ECKERT STATION	1831	1	52
MI	ECKERT STATION	1831	2	47
MI	ECKERT STATION	1831	3	65
MI	ECKERT STATION	1831	4	116
MI	ECKERT STATION	1831	5	154
MI	ECKERT STATION	1831	6	131
MI	ENDICOTT GENERATING STATION	4259	1	98
MI	ERICKSON	1832	1	381
MI	GREENWOOD	6035	1	373
MI	HANCOCK	1730	5	3
MI	HANCOCK	1730	6	3
MI	HARBOR BEACH	1731	1	97
MI	J C WEADOCK	1720	7	346
MI	J C WEADOCK	1720	8	342
MI	J R WHITING	1723	1	225
MI	J R WHITING	1723	2	204
MI	J R WHITING	1723	3	249
MI	JAMES DE YOUNG	1830	5	69
MI	MARYSVILLE	1732	10	22
MI	MARYSVILLE	1732	11	16
MI	MARYSVILLE	1732	12	17
MI	MARYSVILLE	1732	9	17
MI	MIDLAND COGENERATION VENTURE	10745	003	269
MI	MIDLAND COGENERATION VENTURE	10745	004	276
MI	MIDLAND COGENERATION VENTURE	10745	005	271
MI	MIDLAND COGENERATION VENTURE	10745	006	273
MI	MIDLAND COGENERATION VENTURE	10745	007	280
MI	MIDLAND COGENERATION VENTURE	10745	008	277
MI	MIDLAND COGENERATION VENTURE	10745	009	273
MI	MIDLAND COGENERATION VENTURE	10745	010	271
MI	MIDLAND COGENERATION VENTURE	10745	011	274
MI	MIDLAND COGENERATION VENTURE	10745	012	269
MI	MIDLAND COGENERATION VENTURE	10745	013	275
MI	MIDLAND COGENERATION VENTURE	10745	014	269
MI	MISTERSKY	1822	5	33
MI	MISTERSKY	1822	6	155
MI	MISTERSKY	1822	7	98
MI	MONROE	1733	1	1,902
MI	MONROE	1733	2	1,555
MI	MONROE	1733	3	1,574
MI	MONROE	1733	4	1,822
MI	RIVER ROUGE	1740	1	0
MI	RIVER ROUGE	1740	2	627
MI	RIVER ROUGE	1740	3	652
MI	ROUGE POWERHOUSE #1	10272	1	232
MI	ST CLAIR	1743	1	339
MI	ST CLAIR	1743	2	304
MI	ST CLAIR	1743	3	351
MI	ST CLAIR	1743	4	349
MI	ST CLAIR	1743	5	0
MI	ST CLAIR	1743	6	646
MI	ST CLAIR	1743	7	733
MI	TRENTON CHANNEL	1745	16	132
MI	TRENTON CHANNEL	1745	17	124
MI	TRENTON CHANNEL	1745	18	130
MI	TRENTON CHANNEL	1745	19	126
MI	TRENTON CHANNEL	1745	9A	968

Environmental Protection Agency

Pt. 97, App. A

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
MI	WYANDOTTE	1866	5	8
MI	WYANDOTTE	1866	7	81
MI	WYANDOTTE	1866	8	36
NC	ASHEVILLE	2706	1	491
NC	ASHEVILLE	2706	2	479
NC	BELEWS CREEK	8042	1	2,306
NC	BELEWS CREEK	8042	2	2,688
NC	BUCK	2720	5	59
NC	BUCK	2720	6	65
NC	BUCK	2720	7	69
NC	BUCK	2720	8	284
NC	BUCK	2720	9	300
NC	BUTLER WARNER GEN PL	1016	—1	40
NC	BUTLER WARNER GEN PL	1016	—2	40
NC	BUTLER WARNER GEN PL	1016	—3	40
NC	BUTLER WARNER GEN PL	1016	—6	42
NC	BUTLER WARNER GEN PL	1016	—7	40
NC	BUTLER WARNER GEN PL	1016	—8	40
NC	BUTLER WARNER GEN PL	1016	—9	103
NC	CAPE FEAR	2708	5	255
NC	CAPE FEAR	2708	6	361
NC	CLIFFSIDE	2721	1	67
NC	CLIFFSIDE	2721	2	73
NC	CLIFFSIDE	2721	3	95
NC	CLIFFSIDE	2721	4	107
NC	CLIFFSIDE	2721	5	1,180
NC	COGENTRIX-ROCKY MOUNT	50468	ST_unt	303
NC	COGENTRIX ELIZABETHTOWN	10380	ST_OWN	111
NC	COGENTRIX KENANSVILLE	10381	ST_LLE	102
NC	COGENTRIX LUMBERTON	10382	ST_TON	111
NC	COGENTRIX ROXBORO	10379	ST_ORO	166
NC	COGENTRIX SOUTHPORT	10378	ST_ORT	335
NC	DAN RIVER	2723	1	117
NC	DAN RIVER	2723	2	128
NC	DAN RIVER	2723	3	271
NC	G G ALLEN	2718	1	311
NC	G G ALLEN	2718	2	316
NC	G G ALLEN	2718	3	525
NC	G G ALLEN	2718	4	470
NC	G G ALLEN	2718	5	514
NC	L V SUTTON	2713	1	162
NC	L V SUTTON	2713	2	176
NC	L V SUTTON	2713	3	717
NC	L V SUTTON	2713	CT2B	2
NC	LEE	2709	1	129
NC	LEE	2709	2	142
NC	LEE	2709	3	414
NC	LEE	2709	CT4	1
NC	LINCOLN	7277	1	33
NC	LINCOLN	7277	10	31
NC	LINCOLN	7277	11	33
NC	LINCOLN	7277	12	31
NC	LINCOLN	7277	13	26
NC	LINCOLN	7277	14	26
NC	LINCOLN	7277	15	25
NC	LINCOLN	7277	16	25
NC	LINCOLN	7277	2	33
NC	LINCOLN	7277	3	31
NC	LINCOLN	7277	4	31
NC	LINCOLN	7277	5	29
NC	LINCOLN	7277	6	30
NC	LINCOLN	7277	7	24
NC	LINCOLN	7277	8	25
NC	LINCOLN	7277	9	32
NC	MARSHALL	2727	1	899
NC	MARSHALL	2727	2	940
NC	MARSHALL	2727	3	1,588
NC	MARSHALL	2727	4	1,570
NC	MAYO	6250	1A	893
NC	MAYO	6250	1B	875
NC	PANDA-ROSEMARY	50555	CT_ary	62
NC	PANDA-ROSEMARY	50555	CW_ary	47
NC	RIVERBEND	2732	10	266

Pt. 97, App. A

40 CFR Ch. I (7–1–06 Edition)

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
NC	RIVERBEND	2732	7	193
NC	RIVERBEND	2732	8	200
NC	RIVERBEND	2732	9	253
NC	ROANOKE VALLEY	50254	1	440
NC	ROANOKE VALLEY	50254	2	140
NC	ROXBORO	2712	1	766
NC	ROXBORO	2712	2	1,426
NC	ROXBORO	2712	3A	792
NC	ROXBORO	2712	3B	785
NC	ROXBORO	2712	4A	778
NC	ROXBORO	2712	4B	733
NC	TOBACCOVILLE	50221	1	53
NC	TOBACCOVILLE	50221	2	53
NC	TOBACCOVILLE	50221	3	53
NC	TOBACCOVILLE	50221	4	53
NC	UNC—CHAPEL HILL	54276	ST _ill	14
NC	W H WEATHERSPOON	2716	1	76
NC	W H WEATHERSPOON	2716	2	86
NC	W H WEATHERSPOON	2716	3	161
NC	W H WEATHERSPOON	2716	CT-1	4
NC	W H WEATHERSPOON	2716	CT-2	3
NC	W H WEATHERSPOON	2716	CT-3	2
NC	W H WEATHERSPOON	2716	CT-4	4
NJ	B L ENGLAND	2378	1	353
NJ	B L ENGLAND	2378	2	417
NJ	B L ENGLAND	2378	3	114
NJ	BAYONNE	50497	1	139
NJ	BAYONNE	50497	2	143
NJ	BAYONNE	50497	3	140
NJ	BERGEN	2398	1101	152
NJ	BERGEN	2398	1201	157
NJ	BERGEN	2398	1301	155
NJ	BERGEN	2398	1401	152
NJ	BURLINGTON	2399	101	30
NJ	BURLINGTON	2399	102	34
NJ	BURLINGTON	2399	103	39
NJ	BURLINGTON	2399	104	47
NJ	BURLINGTON	2399	11-1	2
NJ	BURLINGTON	2399	11-2	2
NJ	BURLINGTON	2399	11-3	2
NJ	BURLINGTON	2399	11-4	2
NJ	BURLINGTON	2399	7	17
NJ	BURLINGTON	2399	9-1	4
NJ	BURLINGTON	2399	9-2	4
NJ	BURLINGTON	2399	9-3	4
NJ	BURLINGTON	2399	9-4	4
NJ	CAMDEN	10751	1	378
NJ	CARLL'S CORNER STATION	2379	1	2
NJ	CARLL'S CORNER STATION	2379	2	16
NJ	CARNEYS POINT (CCLP) NUG	10566	ST NUG	527
NJ	CEDAR STATION	2380	1E&W	5
NJ	CUMBERLAND	5083	—GT1	40
NJ	DEEPWATER	2384	1	49
NJ	DEEPWATER	2384	4	5
NJ	DEEPWATER	2384	6	42
NJ	DEEPWATER	2384	8	195
NJ	EDISON	2400	1-1A&B	3
NJ	EDISON	2400	1-2A&B	3
NJ	EDISON	2400	1-3A&B	3
NJ	EDISON	2400	1-4A&B	3
NJ	EDISON	2400	2-1A&B	7
NJ	EDISON	2400	2-2A&B	7
NJ	EDISON	2400	2-3A&B	7
NJ	EDISON	2400	2-4A&B	7
NJ	EDISON	2400	3-1A&B	7
NJ	EDISON	2400	3-2A&B	7
NJ	EDISON	2400	3-3A&B	7
NJ	EDISON	2400	3-4A&B	7
NJ	ESSEX	2401	10-1A&B	10
NJ	ESSEX	2401	10-2A&B	10
NJ	ESSEX	2401	10-3A&B	10
NJ	ESSEX	2401	10-4A&B	10
NJ	ESSEX	2401	11-1A&B	11

Environmental Protection Agency

Pt. 97, App. A

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
NJ	ESSEX	2401	11-2A&B	11
NJ	ESSEX	2401	11-3A&B	11
NJ	ESSEX	2401	11-4A&B	11
NJ	ESSEX	2401	12-1A&B	13
NJ	ESSEX	2401	12-2A&B	13
NJ	ESSEX	2401	12-3A&B	13
NJ	ESSEX	2401	12-4A&B	13
NJ	ESSEX	2401	9	66
NJ	FORKED RIVER	7138	—1	17
NJ	FORKED RIVER	7138	—2	17
NJ	GILBERT	2393	03	47
NJ	GILBERT	2393	04	64
NJ	GILBERT	2393	05	63
NJ	GILBERT	2393	06	61
NJ	GILBERT	2393	07	63
NJ	GILBERT	2393	1	4
NJ	GILBERT	2393	2	4
NJ	GILBERT	2393	CT-9	61
NJ	HUDSON	2403	1	175
NJ	HUDSON	2403	2	884
NJ	HUDSON	2403	3	3
NJ	KEARNY	2404	10	26
NJ	KEARNY	2404	11	34
NJ	KEARNY	2404	12-1	8
NJ	KEARNY	2404	12-2	8
NJ	KEARNY	2404	12-3	8
NJ	KEARNY	2404	12-4	8
NJ	KEARNY	2404	7	35
NJ	KEARNY	2404	8	16
NJ	LINDEN	2406	11	16
NJ	LINDEN	2406	12	11
NJ	LINDEN	2406	13	20
NJ	LINDEN	2406	2	52
NJ	LINDEN	2406	6	2
NJ	LINDEN	2406	7	60
NJ	LINDEN	2406	8	70
NJ	LINDEN COGEN	50006	100	276
NJ	LINDEN COGEN	50006	200	280
NJ	LINDEN COGEN	50006	300	274
NJ	LINDEN COGEN	50006	400	272
NJ	LINDEN COGEN	50006	500	278
NJ	LOGAN GENERATING PLANT	10043	1	424
NJ	MERCER	2408	1	489
NJ	MERCER	2408	2	558
NJ	MICKELTON	8008	1	28
NJ	MIDDLE ST	2382	3	4
NJ	MILFORD POWER LP	10616	1	44
NJ	MOBIL NUG	n114	CT_NUG	40
NJ	NEWARK BAY COGEN	50385	1	9
NJ	NEWARK BAY COGEN	50385	2	9
NJ	NORTH JERSEY ENERGY ASSOCIATES	10308	1	19
NJ	NORTH JERSEY ENERGY ASSOCIATES	10308	2	19
NJ	O'BRIEN (NEWARK) COGENERATION, INC.	50797	1	8
NJ	O'BRIEN (PARLIN) COGENERATION, INC.	50799	1	8
NJ	O'BRIEN (PARLIN) COGENERATION, INC.	50799	2	8
NJ	PEDRICKTOWN COGEN	10099	1	13
NJ	PRIME ENERGY LP	50852	1	178
NJ	SALEM	2410	3A&B	3
NJ	SAYREVILLE	2390	07	40
NJ	SAYREVILLE	2390	08	51
NJ	SAYREVILLE	2390	C-1	16
NJ	SAYREVILLE	2390	C-2	13
NJ	SAYREVILLE	2390	C-3	11
NJ	SAYREVILLE	2390	C-4	13
NJ	SEWAREN	2411	1	42
NJ	SEWAREN	2411	2	45
NJ	SEWAREN	2411	3	58
NJ	SEWAREN	2411	4	91
NJ	SEWAREN	2411	6	2
NJ	SHERMAN	7288	CT-1	37
NJ	VINELAND VCLP NUG	54807	GT_NUG	40
NJ	WERNER	2385	04	14
NJ	WERNER	2385	C-1	7

Pt. 97, App. A

40 CFR Ch. I (7–1–06 Edition)

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
NJ	WERNER	2385	C-2	6
NJ	WERNER	2385	C-3	7
NJ	WERNER	2385	C-4	7
NJ	WEST STAT	6776	1	10
NY	59TH STREET	2503	114	41
NY	59TH STREET	2503	115	32
NY	74TH STREET	2504	120	70
NY	74TH STREET	2504	121	80
NY	74TH STREET	2504	122	65
NY	ARTHUR KILL	2490	20	524
NY	ARTHUR KILL	2490	30	380
NY	ASTORIA	8906	30	557
NY	ASTORIA	8906	40	505
NY	ASTORIA	8906	50	561
NY	ASTORIA	8906	GT2-1	9
NY	ASTORIA	8906	GT2-2	9
NY	ASTORIA	8906	GT2-3	9
NY	ASTORIA	8906	GT2-4	9
NY	ASTORIA	8906	GT3-1	9
NY	ASTORIA	8906	GT3-2	9
NY	ASTORIA	8906	GT3-3	9
NY	ASTORIA	8906	GT3-4	9
NY	ASTORIA	8906	GT4-1	9
NY	ASTORIA	8906	GT4-2	9
NY	ASTORIA	8906	GT4-3	9
NY	ASTORIA	8906	GT4-4	9
NY	BOWLINE POINT	2625	1	749
NY	BOWLINE POINT	2625	2	566
NY	BROOKLYN NAVY YARD	54914	1	239
NY	BROOKLYN NAVY YARD	54914	2	220
NY	CHARLES POLETTI	2491	001	883
NY	DANSKAMMER	2480	1	34
NY	DANSKAMMER	2480	2	45
NY	DANSKAMMER	2480	3	229
NY	DANSKAMMER	2480	4	449
NY	EF BARRETT	2511	10	285
NY	EF BARRETT	2511	20	287
NY	EAST RIVER	2493	50	33
NY	EAST RIVER	2493	60	319
NY	EAST RIVER	2493	70	113
NY	FAR ROCKAWAY	2513	40	138
NY	GLENWOOD	2514	40	151
NY	GLENWOOD	2514	50	124
NY	GLENWOOD	2514	U00020	1
NY	GLENWOOD	2514	U00021	1
NY	HUDSON AVENUE	2496	100	162
NY	LOVETT	2629	3	74
NY	LOVETT	2629	4	304
NY	LOVETT	2629	5	380
NY	NISSEQUOGUE COGEN PARTNERS	4931	1	86
NY	NORTHPORT	2516	1	343
NY	NORTHPORT	2516	2	533
NY	NORTHPORT	2516	3	375
NY	NORTHPORT	2516	4	582
NY	O&R HILLBURN GT	2628	1	2
NY	O&R SHOEMAKER GT	2632	1	10
NY	PORT JEFFERSON	2517	3	270
NY	PORT JEFFERSON	2517	4	253
NY	RAVENSWOOD	2500	10	299
NY	RAVENSWOOD	2500	20	363
NY	RAVENSWOOD	2500	30	1,360
NY	RAVENSWOOD	2500	GT2-1	3
NY	RAVENSWOOD	2500	GT2-2	3
NY	RAVENSWOOD	2500	GT2-3	3
NY	RAVENSWOOD	2500	GT2-4	3
NY	RAVENSWOOD	2500	GT3-1	3
NY	RAVENSWOOD	2500	GT3-2	3
NY	RAVENSWOOD	2500	GT3-3	3
NY	RAVENSWOOD	2500	GT3-4	3
NY	RICHARD M FLYNN	7314	NA1	246
NY	RICHARD M FLYNN	7314	NA2	25
NY	ROSETON	8006	1	479
NY	ROSETON	8006	2	595

Environmental Protection Agency

Pt. 97, App. A

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
NY	TRIGEN-NDEC	52056	4	105
NY	WADING RIVER	7146	1	8
NY	WADING RIVER	7146	2	8
NY	WADING RIVER	7146	3	8
NY	WADING RIVER	7146	UGT013	1
NY	WATERSIDE	2502	61	84
NY	WATERSIDE	2502	62	91
NY	WATERSIDE	2502	80	208
NY	WATERSIDE	2502	90	208
NY	WEST BABYLON	2521	1	2
OH	ASHTABULA	2835	10	75
OH	ASHTABULA	2835	11	80
OH	ASHTABULA	2835	7	333
OH	ASHTABULA	2835	8	70
OH	ASHTABULA	2835	9	66
OH	AVON LAKE	2836	10	139
OH	AVON LAKE	2836	12	1,040
OH	AVON LAKE	2836	9	41
OH	AVON LAKE	2836	CT10	3
OH	BAY SHORE	2878	1	208
OH	BAY SHORE	2878	2	229
OH	BAY SHORE	2878	3	213
OH	BAY SHORE	2878	4	330
OH	CARDINAL	2828	1	1,030
OH	CARDINAL	2828	2	1,083
OH	CARDINAL	2828	3	1,079
OH	CONESVILLE	2840	1	214
OH	CONESVILLE	2840	2	203
OH	CONESVILLE	2840	3	212
OH	CONESVILLE	2840	4	1,119
OH	CONESVILLE	2840	5	731
OH	CONESVILLE	2840	6	736
OH	DICKS CREEK	2831	1	7
OH	EASTLAKE	2837	1	214
OH	EASTLAKE	2837	2	230
OH	EASTLAKE	2837	3	251
OH	EASTLAKE	2837	4	371
OH	EASTLAKE	2837	5	974
OH	EASTLAKE	2837	6	1
OH	EDGEWATER	2857	13	65
OH	EDGEWATER	2857	A	1
OH	EDGEWATER	2857	B	1
OH	FRANK M TAIT	2847	GT1	23
OH	FRANK M TAIT	2847	GT2	25
OH	GEN J M GAVIN	8102	1	2,744
OH	GEN J M GAVIN	8102	2	2,981
OH	HAMILTON	2917	9	110
OH	J M STUART	2850	1	1,054
OH	J M STUART	2850	2	1,228
OH	J M STUART	2850	3	1,074
OH	J M STUART	2850	4	1,106
OH	KILLEN STATION	6031	2	1,706
OH	KYGER CREEK	2876	1	471
OH	KYGER CREEK	2876	2	471
OH	KYGER CREEK	2876	3	478
OH	KYGER CREEK	2876	4	465
OH	KYGER CREEK	2876	5	455
OH	LAKE SHORE	2838	18	195
OH	MAD RIVER	2860	A	2
OH	MAD RIVER	2860	B	2
OH	MIAMI FORT	2832	5-1	35
OH	MIAMI FORT	2832	5-2	35
OH	MIAMI FORT	2832	6	398
OH	MIAMI FORT	2832	7	1,044
OH	MIAMI FORT	2832	8	1,015
OH	MIAMI FORT	2832	CT2	1
OH	MUSKINGUM RIVER	2872	1	309
OH	MUSKINGUM RIVER	2872	2	316
OH	MUSKINGUM RIVER	2872	3	347
OH	MUSKINGUM RIVER	2872	4	349
OH	MUSKINGUM RIVER	2872	5	1,105
OH	NILES	2861	1	212
OH	NILES	2861	2	160

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
OH	NILES	2861	A	2
OH	O H HUTCHINGS	2848	H-1	24
OH	O H HUTCHING	2848	H-2	37
OH	O H HUTCHINGS	2848	H-3	64
OH	O H HUTCHINGS	2848	H-4	68
OH	O H HUTCHINGS	2848	H-5	62
OH	O H HUTCHINGS	2848	H-6	69
OH	O H HUTCHINGS	2848	H-7	1
OH	PICWAY	2843	9	141
OH	R E BURGER	2864	1	0
OH	R E BURGER	2864	2	0
OH	R E BURGER	2864	3	0
OH	R E BURGER	2864	4	0
OH	R E BURGER	2864	5	14
OH	R E BURGER	2864	6	13
OH	R E BURGER	2864	7	337
OH	R E BURGER	2864	8	274
OH	RICHARD GORSUCH	7286	1	146
OH	RICHARD GORSUCH	7286	2	138
OH	RICHARD GORSUCH	7286	3	144
OH	RICHARD GORSUCH	7286	4	146
OH	W H SAMMIS	2866	1	402
OH	W H SAMMIS	2866	2	418
OH	W H SAMMIS	2866	3	400
OH	W H SAMMIS	2866	4	415
OH	W H SAMMIS	2866	5	631
OH	W H SAMMIS	2866	6	1,221
OH	W H SAMMIS	2866	7	1,259
OH	W H ZIMMER	6019	1	2,918
OH	WALTER C BECKJORD	2830	1	167
OH	WALTER C BECKJORD	2830	2	198
OH	WALTER C BECKJORD	2830	3	281
OH	WALTER C BECKJORD	2830	4	347
OH	WALTER C BECKJORD	2830	5	481
OH	WALTER C BECKJORD	2830	6	850
OH	WALTER C BECKJORD	2830	CT1	3
OH	WALTER C BECKJORD	2830	CT2	3
OH	WALTER C BECKJORD	2830	CT3	4
OH	WALTER C BECKJORD	2830	CT4	2
OH	WEST LORAIN	2869	1A	0
OH	WEST LORAIN	2869	1B	0
OH	WOODSDALE	7158	—GT1	30
OH	WOODSDALE	7158	—GT2	30
OH	WOODSDALE	7158	—GT3	39
OH	WOODSDALE	7158	—GT4	37
OH	WOODSDALE	7158	—GT5	40
OH	WOODSDALE	7158	—GT6	39
PA	AES BEAVER VALLEY	10676	032	144
PA	AES BEAVER VALLEY	10676	033	131
PA	AES BEAVER VALLEY	10676	034	133
PA	AES BEAVER VALLEY	10676	035	67
PA	ARMSTRONG	3178	1	363
PA	ARMSTRONG	3178	2	383
PA	BRUCE MANSFIELD	6094	1	1,657
PA	BRUCE MANSFIELD	6094	2	1,672
PA	BRUCE MANSFIELD	6094	3	1,636
PA	BRUNNER ISLAND	3140	1	568
PA	BRUNNER ISLAND	3140	2	718
PA	BRUNNER ISLAND	3140	3	1,539
PA	BRUNOT ISLAND	3096	2A	0
PA	BRUNOT ISLAND	3096	2B	0
PA	BRUNOT ISLAND	3096	3	0
PA	CAMBRIA COGEN	10641	1	155
PA	CAMBRIA COGEN	10641	2	161
PA	CHESWICK	8226	1	1,119
PA	COLVER POWER PROJECT	10143	1	291
PA	CONEMAUGH	3118	1	2,167
PA	CONEMAUGH	3118	2	1,995
PA	CROMBY	3159	1	377
PA	CROMBY	3159	2	201
PA	DELAWARE	3160	71	61
PA	DELAWARE	3160	81	56
PA	EBENSBURG POWER	10603	1	191

Environmental Protection Agency

Pt. 97, App. A

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
PA	EDDYSTONE	3161	1	565
PA	EDDYSTONE	3161	2	636
PA	EDDYSTONE	3161	3	207
PA	EDDYSTONE	3161	4	237
PA	ELRAMA	3098	1	214
PA	ELRAMA	3098	2	209
PA	ELRAMA	3098	3	208
PA	ELRAMA	3098	4	428
PA	FOSTER WHEELER MT. CARMEL	10343	AB_NUG	152
PA	GILBERTON POWER NUG	010113	AB_NUG	273
PA	GPU GENCO WAYNE	3134	1	8
PA	HATFIELD'S FERRY	3179	1	1,155
PA	HATFIELD'S FERRY	3179	2	1,029
PA	HATFIELD'S FERRY	3179	3	1,087
PA	HOLTWOOD	3145	17	246
PA	HOMER CITY	3122	1	1,471
PA	HOMER CITY	3122	2	1,553
PA	HOMER CITY	3122	3	1,437
PA	HUNLOCK PWR STATION	3176	6	131
PA	KEYSTONE	3136	1	2,154
PA	KEYSTONE	3136	2	2,133
PA	KIMBERLY-CLARK	3157	10	211
PA	MARTINS CREEK	3148	1	314
PA	MARTINS CREEK	3148	2	293
PA	MARTINS CREEK	3148	3	543
PA	MARTINS CREEK	3148	4	500
PA	MITCHELL	3181	1	10
PA	MITCHELL	3181	2	6
PA	MITCHELL	3181	3	9
PA	MITCHELL	3181	33	556
PA	MONTOUR	3149	1	1,560
PA	MONTOUR	3149	2	1,673
PA	MOUNTAIN	3111	1	5
PA	MOUNTAIN	3111	2	5
PA	NEW CASTLE	3138	3	190
PA	NEW CASTLE	3138	4	195
PA	NEW CASTLE	3138	5	245
PA	NORCON POWER PARTNERS LP	54571	1	103
PA	NORCON POWER PARTNERS LP	54571	2	109
PA	NORTHAMPTON GENERATING	50888	1	291
PA	NORTHEASTERN POWER	50039		188
PA	PANTHER CREEK	50776	1	134
PA	PANTHER CREEK	50776	2	130
PA	PECO ENERGY CROYDEN	8012	11	11
PA	PECO ENERGY CROYDEN	8012	12	9
PA	PECO ENERGY CROYDEN	8012	21	5
PA	PECO ENERGY CROYDEN	8012	22	11
PA	PECO ENERGY CROYDEN	8012	31	13
PA	PECO ENERGY CROYDEN	8012	32	6
PA	PECO ENERGY CROYDEN	8012	41	11
PA	PECO ENERGY CROYDEN	8012	42	9
PA	PECO ENERGY RICHMOND	3168	91	10
PA	PECO ENERGY RICHMOND	3168	92	9
PA	PHILLIPS POWER STATION	3099	3	0
PA	PHILLIPS POWER STATION	3099	4	0
PA	PHILLIPS POWER STATION	3099	5	0
PA	PHILLIPS POWER STATION	3099	6	0
PA	PINEY CREEK	54144	1	102
PA	PORTLAND	3113	—5	48
PA	PORTLAND	3113	1	266
PA	PORTLAND	3113	2	412
PA	SCHUYLKILL	3169	1	84
PA	SCHUYLKILL ENERGY RESOURCES	880010	1	289
PA	SCHUYLKILL STATION (TURBI	50607	AB_NUG	701
PA	SCRUBGRASS GENERATING PLANT	50974	1	124
PA	SCRUBGRASS GENERATING PLANT	50974	2	123
PA	SEWARD	3130	12	64
PA	SEWARD	3130	14	72
PA	SEWARD	3130	15	355
PA	SHAWVILLE	3131	1	295
PA	SHAWVILLE	3131	2	294
PA	SHAWVILLE	3131	3	380
PA	SHAWVILLE	3131	4	392

Pt. 97, App. A

40 CFR Ch. I (7–1–06 Edition)

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
PA	SUNBURY	3152	1A	134
PA	SUNBURY	3152	1B	122
PA	SUNBURY	3152	2A	130
PA	SUNBURY	3152	2B	134
PA	SUNBURY	3152	3	263
PA	SUNBURY	3152	4	302
PA	TITUS	3115	1	161
PA	TITUS	3115	2	152
PA	TITUS	3115	3	151
PA	TOLNA	3116	1	3
PA	TOLNA	3116	2	4
PA	TRIGEN ENERGY SANSOM	880006	1	12
PA	TRIGEN ENERGY SANSOM	880006	2	10
PA	TRIGEN ENERGY SANSOM	880006	3	5
PA	TRIGEN ENERGY SANSOM	880006	4	6
PA	WARREN	3132	1	47
PA	WARREN	3132	2	32
PA	WARREN	3132	3	40
PA	WARREN	3132	4	42
PA	WARREN	3132	CT1	14
PA	WESTWOOD ENERGY PROPERTIE	50611	031	98
PA	WHEELABRATOR FRACKVILLE E	50879	GEN1	161
PA	WILLIAMS GEN—HAZELTON	10870	HRSG	16
PA	WILLIAMS GEN—HAZELTON	10870	TURBN	141
VA	BELLMEADE	7696	1	76
VA	BELLMEADE	7696	2	88
VA	BREMO BLUFF	3796	3	137
VA	BREMO BLUFF	3796	4	386
VA	CHESAPEAKE	3803	1	298
VA	CHESAPEAKE	3803	2	308
VA	CHESAPEAKE	3803	3	370
VA	CHESAPEAKE	3803	4	571
VA	CHESAPEAKE CORP.	10017	ST _rp.	59
VA	CHESTERFIELD	3797	—8	263
VA	CHESTERFIELD	3797	3	232
VA	CHESTERFIELD	3797	4	389
VA	CHESTERFIELD	3797	5	769
VA	CHESTERFIELD	3797	6	1,348
VA	CHESTERFIELD	3797	7	316
VA	CLINCH RIVER	3775	1	548
VA	CLINCH RIVER	3775	2	520
VA	CLINCH RIVER	3775	3	575
VA	CLOVER	7213	1	1,033
VA	CLOVER	7213	2	1,118
VA	COGENTRIX—HOPEWELL	10377	ST _ell	327
VA	COGENTRIX—PORTSMOUTH	10071	ST _uth	356
VA	COGENTRIX RICHMOND 1	54081	ST _d 1	299
VA	COGENTRIX RICHMOND 2	54081	ST _d 2	209
VA	COMMONWEALTH ATLANTIC LP	52087	GT _LP	35
VA	DARBYTOWN	7212	—1	29
VA	DARBYTOWN	7212	—2	28
VA	DARBYTOWN	7212	—3	30
VA	DARBYTOWN	7212	—4	29
VA	DOSWELL #1	52019	CA _#1	46
VA	DOSWELL #1	52019	CT _#1	94
VA	DOSWELL #2	52019	CA _#2	46
VA	DOSWELL #2	52019	CT _#2	94
VA	GLEN LYN	3776	51	101
VA	GLEN LYN	3776	52	110
VA	GLEN LYN	3776	6	487
VA	GORDONSVILLE 1	54844	CA _e 1	16
VA	GORDONSVILLE 1	54844	CT _e 1	33
VA	GORDONSVILLE 2	54844	CA _Xe 2	17
VA	GORDONSVILLE 2	54844	CT _e 2	34
VA	GRAVEL NECK	7032	—3	21
VA	GRAVEL NECK	7032	—X4	24
VA	GRAVEL NECK	7032	—5	14
VA	GRAVEL NECK	7032	—6	18
VA	HOPEWELL COGEN, INC.	10633	CT _nc.	102 OW≤
VA	HOPEWELL COGEN, INC.	10633	CW _nc.	53
VA	LG&E-WESTMORELAND ALTAVISTA	10773	1	18
VA	LG&E-WESTMORELAND ALTAVISTA	10773	2	18
VA	LG&E-WESTMORELAND HOPEWELL	10771	1	17

Environmental Protection Agency

Pt. 97, App. B

ST	Plant	Plant_id	Point_id	NO _x allocation for EGUs
VA	LG&E-WESTMORELAND HOPEWELL	10771	2	16
VA	LG&E-WESTMORELAND SOUTHAMPTON	10774	1	23
VA	LG&E-WESTMORELAND SOUTHAMPTON	10774	2	29
VA	MECKLENBURG	52007	ST_urg	234
VA	POSSUM POINT	3804	3	221
VA	POSSUM POINT	3804	4	528
VA	POSSUM POINT	3804	5	322
VA	POTOMAC RIVER	3788	1	203
VA	POTOMAC RIVER	3788	2	139
VA	POTOMAC RIVER	3788	3	232
VA	POTOMAC RIVER	3788	4	223
VA	POTOMAC RIVER	3788	5	222
VA	SEI BIRCHWOOD	12	1	305
VA	TASLEY	3785	10	6
VA	YORKTOWN	3809	1	386
VA	YORKTOWN	3809	2	419
VA	YORKTOWN	3809	3	764
WV	ALBRIGHT	3942	1	76
WV	ALBRIGHT	3942	2	71
WV	ALBRIGHT	3942	3	241
WV	FORT MARTIN	3943	1	887
WV	FORT MARTIN	3943	2	868
WV	GRANT TOWN	10151	ST_own	156
WV	HARRISON	3944	1	1,385
WV	HARRISON	3944	2	1,444
WV	HARRISON	3944	3	1,505
WV	JOHN E AMOS	3935	1	1,254
WV	JOHN E AMOS	3935	2	1,198
WV	JOHN E AMOS	3935	3	1,859
WV	KAMMER	3947	1	399
WV	KAMMER	3947	2	418
WV	KAMMER	3947	3	447
WV	KANAWHA RIVER	3936	1	336
WV	KANAWHA RIVER	3936	2	323
WV	MITCHELL	3948	1	1,288
WV	MITCHELL	3948	2	1,191
WV	MORGANTOWN ENERGY ASSOCIATES	27	1	80
WV	MORGANTOWN ENERGY ASSOCIATES	27	2	80
WV	MOUNTAINEER (1301)	6264	1	1,952
WV	MT STORM	3954	1	1,048
WV	MT STORM	3954	2	1,127
WV	MT STORM	3954	3	1,236
WV	NORTH BRANCH	7537	1A	51
WV	NORTH BRANCH	7537	1B	53
WV	PHIL SPORN	3938	11	239
WV	PHIL SPORN	3938	21	215
WV	PHIL SPORN	3938	31	239
WV	PHIL SPORN	3938	41	230
WV	PHIL SPORN	3938	51	708
WV	PLEASANTS	6004	1	1,296
WV	PLEASANTS	6004	2	1,165
WV	RIVESVILLE	3945	7	38
WV	RIVESVILLE	3945	8	88
WV	WILLOW ISLAND	3946	1	79
WV	WILLOW ISLAND	3946	2	246

[6 FR 2727, Jan. 18, 2000, as amended at 66 FR 48575, Sept. 21, 2001]

APPENDIX B TO PART 97—FINAL SECTION 126 RULE: NON-EGU ALLOCATIONS, 2004–2007

State	County	Plant	Plant ID	Point ID	NO _x allocation for non-EGUs
DC	Washington	GSA CENTRAL HEATING PLANT	0025	003	0
DC	Washington	GSA CENTRAL HEATING PLANT	0025	004	0
DC	Washington	GSA CENTRAL HEATING PLANT	0025	005	0
DC	Washington	GSA CENTRAL HEATING PLANT	0025	006	0
DC	Washington	GSA WEST HEATING PLANT	0024	003	13
DC	Washington	GSA WEST HEATING PLANT	0024	005	12
DE	Kent	KRAFT FOODS INC	0007	001	0

State	County	Plant	Plant ID	Point ID	NO _x allocation for non-EGUs
DE	New Castle	MOTIVA ENTERPRISES (FORMERLY STAR ENTERPRISE, DELAWARE CITY PLANT).	0016	002	102
DE	New Castle	MOTIVA ENTERPRISES (FORMERLY STAR ENTERPRISE, DELAWARE CITY PLANT).	0016	012	118
KY	Boyd	ASHLAND OIL INC	0004	061	23
KY	Lawrence	KENTUCKY POWER CO	0003	004	0
MD	Baltimore	BETHLEHEM STEEL	0147	016	75
MD	Baltimore	BETHLEHEM STEEL	0147	017	75
MD	Baltimore	BETHLEHEM STEEL	0147	018	75
MD	Baltimore	BETHLEHEM STEEL	0147	019	75
MD	Allegany	WESTVACO	0011	001	289
MD	Allegany	WESTVACO	0011	002	373
MI	Wayne	DETROIT EDISON CO	B2810	0003	31
MI	Midland	DOW CHEMICAL USA	A4033	0401	6
MI	Midland	DOW CHEMICAL USA	A4033	0402	0
MI	Wayne	DSC LTD	B3680	0006	30
MI	Genesee	GENERAL MOTORS CORP	A1178	0501	63
MI	Genesee	GENERAL MOTORS CORP	A1178	0502	47
MI	Oakland	GENERAL MOTORS CORP	B4031	0506	22
MI	Genesee	GENERAL MOTORS CORP	A1178	0507	20
MI	Oakland	GENERAL MOTORS CORP	B4032	0510	4
MI	Kalamazoo	GEORGIA PACIFIC CORP	B4209	0005	6
MI	Kalamazoo	JAMES RIVER PAPER CO INC	B1678	0003	90
MI	Wayne	MARATHON OIL COMPANY	A9831	0001	109
MI	Allegan	MENASHA CORP	A0023	0024	71
MI	Allegan	MENASHA CORP	A0023	0025	69
MI	Ingham	MICHIGAN STATE UNIVERSITY	K3249	0053	110
MI	Ingham	MICHIGAN STATE UNIVERSITY	K3249	0054	118
MI	Ingham	MICHIGAN STATE UNIVERSITY	K3249	0055	77
MI	Ingham	MICHIGAN STATE UNIVERSITY	K3249	0056	73
MI	Washtenaw	THE REGENTS OF THE UNIVERSITY OF MICHIGAN.	M0675	0001	40
MI	Washtenaw	THE REGENTS OF THE UNIVERSITY OF MICHIGAN.	M0675	0002	37
MI	Oakland	WILLIAM BEAUMONT HOSPITAL	G5067	0010	0
MI	Oakland	WILLIAM BEAUMONT HOSPITAL	G5067	0011	0
NC	Haywood	BLUE RIDGE PAPER PRODUCTS INC	0159	005	129
NC	Haywood	CHAMPION INT CORP	0159	001	98
NC	Haywood	CHAMPION INT CORP	0159	002	88
NC	Haywood	CHAMPION INT CORP	0159	003	200
NC	Haywood	CHAMPION INT CORP	0159	004	176
NC	Halifax	CHAMPION INTERNATIONAL CORP. ROANOKE RAP.	0007	001	340
NC	Guilford	CONE MILLS CORP—WHITE OAK PLANT	0863	004	50
NC	Cabarrus	FIELDCREST—CANNON PLT 1 KANNAPOLIS	0006	001	77
NC	Columbus	INTERNATIONAL PAPER: RIEGELWOOD	0036	003	90
NC	Columbus	INTERNATIONAL PAPER: RIEGELWOOD	0036	004	228
NC	Martin	WEYERHAEUSER PAPER CO. PLYMOUTH	0069	001	265
NC	Craven	WEYERHAEUSER COMPANY NEW BERN MILL	0104	005	205
NC	Craven	WEYERHAEUSER COMPANY NEW BERN MILL	0104	006	72
NC	Martin	WEYERHAEUSER COMPANY PLYMOUTH	0069	009	25
NJ	Middlesex	BALL—INCON GLASS PACKAGING	15035	001	46
NJ	Hudson	BEST FOODS CPC INTERNATIONAL I	10003	003	27
NJ	Middlesex	CHEVRON U.S.A., INC	15023	001	17
NJ	Middlesex	CHEVRON U.S.A., INC	15023	043	55
NJ	Gloucester	COASTAL EAGLE POINT OIL COMPAN	55004	001	3
NJ	Gloucester	COASTAL EAGLE POINT OIL COMPAN	55004	038	11
NJ	Gloucester	COASTAL EAGLE POINT OIL COMPAN	55004	039	11
NJ	Gloucester	COASTAL EAGLE POINT OIL COMPAN	55004	040	11
NJ	Gloucester	COASTAL EAGLE POINT OIL COMPAN	55004	064	38
NJ	Gloucester	COASTAL EAGLE POINT OIL COMPAN	55004	123	37
NJ	Middlesex	DEGUSSA CORPORATION-METZ DIVIS	15305	009	15
NJ	Union	EXXON CORPORATION	40003	001	57
NJ	Union	EXXON CORPORATION	40003	007	22
NJ	Union	EXXON CORPORATION	40003	014	98
NJ	Union	EXXON CORPORATION	40003	015	14
NJ	Middlesex	HERCULES INCORPORATED	15017	001	38
NJ	Middlesex	HERCULES INCORPORATED	15017	002	37
NJ	Warren	HOFFMAN LAROCHE INC	85010	034	45
NJ	Mercer	HOMASCITE COMPANY	60018	001	290
NJ	Mercer	HOMASCITE COMPANY	60018	002	312
NJ	Passaic	INTERNATIONAL VEILING CORPORAT	30098	001	22

Environmental Protection Agency

Pt. 97, App. B

State	County	Plant	Plant ID	Point ID	NO _x allocation for non-EGUs
NJ	Bergen	MALT PRODUCTS CORPORATION	00322	001	27
NJ	Atlantic	MARINA ASSOCIATES	70009	001	330
NJ	Atlantic	MARINA ASSOCIATES	70009	002	329
NJ	Atlantic	MARINA ASSOCIATES	70009	003	990
NJ	Union	MERCK & CO., INC.	40009	001	66
NJ	Union	MERCK & CO., INC.	40009	002	61
NJ	Union	MERCK & CO., INC.	40009	003	56
NJ	Union	MERCK & CO., INC.	40009	004	75
NJ	Union	MERCK & CO., INC.	40009	005	89
NJ	Union	MERCK & CO., INC.	40009	006	103
NJ	Gloucester	MOBIL OIL CORPORATION	55006	001	54
NJ	Gloucester	MOBIL OIL CORPORATION	55006	002	54
NJ	Gloucester	MOBIL OIL CORPORATION	55006	003	54
NJ	Gloucester	MOBIL OIL CORPORATION	55006	004	49
NJ	Gloucester	MOBIL OIL CORPORATION	55006	005	16
NJ	Gloucester	MOBIL OIL CORPORATION	55006	006	105
NJ	Gloucester	MOBIL OIL CORPORATION	55006	027	0
NJ	Gloucester	MOBIL OIL CORPORATION	55006	270	14
NJ	Monmouth	NESTLE CO., INC., THE	20004	006	13
NJ	Monmouth	NESTLE CO., INC., THE	20004	007	13
NJ	Middlesex	NEW JERSEY STEEL CORPORATION	15076	001	18
NJ	Gloucester	PETROLEUM RECYCLING, INC.	55180	020	169
NJ	Atlantic	SCOTT PAPER COMPANY	70011	002	89
NJ	Atlantic	SCOTT PAPER COMPANY	70011	003	75
NJ	Atlantic	SCOTT PAPER COMPANY	70011	004	99
NJ	Mercer	STONY BROOK REGIONAL SEWERAGE	60248	001	55
NJ	Mercer	STONY BROOK REGIONAL SEWERAGE	60248	002	55
NY	Kings	HUDSON AVENUE	2496	B71	19
NY	Kings	HUDSON AVENUE	2496	B72	19
NY	Kings	HUDSON AVENUE	2496	B81	19
NY	Kings	HUDSON AVENUE	2496	B82	19
NY	Queens	RAVENSWOOD-A-HOUSE	CE03	B01	15
NY	Queens	RAVENSWOOD-A-HOUSE	CE03	B02	15
NY	Queens	RAVENSWOOD-A-HOUSE	CE03	B03	21
NY	Queens	RAVENSWOOD-A-HOUSE	CE03	B04	21
OH	Butler	AK STEEL (FORMERLY ARMCO STEEL CO.)	1409010006	P009	66
OH	Butler	AK STEEL (FORMERLY ARMCO STEEL CO.)	1409010006	P010	66
OH	Butler	AK STEEL (FORMERLY ARMCO STEEL CO.)	1409010006	P011	66
OH	Butler	AK STEEL (FORMERLY ARMCO STEEL CO.)	1409010006	P012	66
OH	Stark	ASHLAND PETROLEUM COMPANY	1576000301	B015	18
OH	Lucas	BP OIL COMPANY, TOLEDO REFINERY	0448020007	B004	39
OH	Lucas	BP OIL COMPANY, TOLEDO REFINERY	0448020007	B020	102
OH	Montgomery	CARGILL INCORPORATED	0857041124	B004	133
OH	Montgomery	CARGILL INCORPORATED	0857041124	B006	1
OH	Butler	CHAMPION INTERNATIONAL CORP	1409040212	B010	267
OH	Summit	GOODYEAR TIRE & RUBBER COMPANY	1677010193	B001	101
OH	Summit	GOODYEAR TIRE & RUBBER COMPANY	1677010193	B002	108
OH	Hamilton	HENKEL CORP.—EMERY GROUP	1431070035	B027	209
OH	Cuyahoga	LTV STEEL COMPANY, INC.	1318001613	B001	139
OH	Cuyahoga	LTV STEEL COMPANY, INC.	1318001613	B002	150
OH	Cuyahoga	LTV STEEL COMPANY, INC.	1318001613	B003	159
OH	Cuyahoga	LTV STEEL COMPANY, INC.	1318001613	B004	158
OH	Cuyahoga	LTV STEEL COMPANY, INC.	1318001613	B007	155
OH	Cuyahoga	LTV STEEL COMPANY, INC.	1318001613	B905	14
OH	Ross	MEAD CORPORATION	0671010028	B001	185
OH	Ross	MEAD CORPORATION	0671010028	B002	208
OH	Ross	MEAD CORPORATION	0671010028	B003	251
OH	Scioto	NEW BOSTON COKE CORP	0773010004	B008	20
OH	Scioto	NEW BOSTON COKE CORP	0773010004	B009	15
OH	Hamilton	PROCTER & GAMBLE CO	1431390903	B021	72
OH	Hamilton	PROCTER & GAMBLE CO	1431390903	B022	296
OH	Lorain	REPUBLIC ENGINEERED STEELS, INC. (FORMERLY USS/KOBE STEEL—LORAIN WORKS).	0247080229	B013	159
OH	Lawrence	SOUTH POINT ETHANOL	0744000009	B003	107
OH	Lawrence	SOUTH POINT ETHANOL	0744000009	B004	107
OH	Lawrence	SOUTH POINT ETHANOL	0744000009	B007	107
OH	Lucas	SUN REFINING & MARKETING CO, TOLEDO REF	0448010246	B044	47
OH	Lucas	SUN REFINING & MARKETING CO, TOLEDO REF	0448010246	B046	34
OH	Lucas	SUN REFINING & MARKETING CO, TOLEDO REF	0448010246	B047	18
OH	Trumbull	W C I STEEL, INC	0278000463	B001	113
OH	Trumbull	W C I STEEL, INC	0278000463	B004	142
PA	Northampton	BETHLEHEM STEEL CORP	0048	041	100

State	County	Plant	Plant ID	Point ID	NO _x allocation for non-EGUs
PA	Northampton	BETHLEHEM STEEL CORP	0048	042	66
PA	Northampton	BETHLEHEM STEEL CORP	0048	067	165
PA	Armstrong	BMG ASPHALT CO	0004	101	0
PA	Erie	GENERAL ELECTRIC	0009	032	16
PA	York	GLATFELTER, P. H. CO	0016	031	0
PA	York	GLATFELTER, P. H. CO	0016	034	137
PA	York	GLATFELTER, P. H. CO	0016	035	112
PA	York	GLATFELTER, P. H. CO	0016	036	211
PA	Clinton	INTERNATIONAL PAPER: LOCKHAVEN	0008	033	101
PA	Clinton	INTERNATIONAL PAPER: LOCKHAVEN	0008	034	90
PA	Delaware	KIMBERLY CLARK (FORMERLY SCOTT PAPER CO.).	0016	034	1
PA	Delaware	KIMBERLY CLARK (FORMERLY SCOTT PAPER CO.).	0016	035	345
PA	Allegheny	LTV STEEL COMPANY—PITTSBURGH WORKS ...	0022	015	25
PA	Allegheny	LTV STEEL COMPANY—PITTSBURGH WORKS ...	0022	017	15
PA	Allegheny	LTV STEEL COMPANY—PITTSBURGH WORKS ...	0022	019	29
PA	Allegheny	LTV STEEL COMPANY—PITTSBURGH WORKS ...	0022	021	55
PA	Montgomery	MERCK SHARP & DOHME	0028	039	126
PA	Westmoreland ..	MONESSEN INC	0007	031	0
PA	Bucks	PECO	0055	043	15
PA	Bucks	PECO	0055	045	32
PA	Bucks	PECO	0055	044	77
PA	Wyoming	PROCTER & GAMBLE CO	0009	035	187
PA	Allegheny	SHENANGO IRON & COKE WORKS	0050	006	18
PA	Allegheny	SHENANGO IRON & COKE WORKS	0050	009	15
PA	Delaware	SUN REFINING & MARKETING CO	0025	089	102
PA	Delaware	SUN REFINING & MARKETING CO	0025	090	163
PA	Philadelphia	SUN REFINING AND MARKETING 1 O	1501	020	49
PA	Philadelphia	SUN REFINING AND MARKETING 1 O	1501	021	83
PA	Philadelphia	SUN REFINING AND MARKETING 1 O	1501	022	105
PA	Philadelphia	SUN REFINING AND MARKETING 1 O	1501	023	127
PA	Philadelphia	SUNOCO (FORMERLY ALLIED CHEMICAL CORP)	1551	052	86
PA	Perry	TEXAS EASTERN GAS PIPELINE COMPANY	0001	031	0
PA	Berks	TEXAS EASTERN GAS PIPELINE COMPANY	0087	031	98
PA	Delaware	TOSCO REFINING (FORMERLY BP OIL, INC.)	0030	032	71
PA	Delaware	TOSCO REFINING (FORMERLY BP OIL, INC.)	0030	033	80
PA	Philadelphia	U.S. NAVAL BASE	9702	016	0
PA	Philadelphia	U.S. NAVAL BASE	9702	017	1
PA	Philadelphia	U.S. NAVAL BASE	9702	098	0
PA	Philadelphia	U.S. NAVAL BASE	9702	099	0
PA	Elk	WILLAMETTE INDUSTRIES (FORMERLY PENNTECH PAPERS, INC.	0005	040	90
PA	Elk	WILLAMETTE INDUSTRIES (FORMERLY PENNTECH PAPERS, INC.	0005	041	89
PA	Beaver	ZINC CORPORATION OF AMERICA	0032	034	176
PA	Beaver	ZINC CORPORATION OF AMERICA	0032	035	180
VA	Hopewell	ALLIED-SIGNAL INC	0026	002	499
VA	York	AMOCO OIL CO	0004	001	25
VA	Giles	CELANESE ACETATE LLC (FORMERLY HOECHST CELANESE CORP).	0004	007	148
VA	Giles	CELANESE ACETATE LLC (FORMERLY HOECHST CELANESE CORP).	0004	014	56
VA	Pittsylvania	DAN RIVER INC. (SCHOOLFIELD DIV)	0002	003	49
VA	Bedford	GEORGIA-PACIFIC—BIG ISLAND MILL	0003	002	86
VA	Isle Of Wight ...	INTERNATIONAL PAPER—FRANKLIN (FORMERLY UNION CAMP CORP/FINE PAPER DIV).	0006	003	272
VA	Hopewell	JAMES RIVER COGENERATION (COGE	0055	001	511
VA	Hopewell	JAMES RIVER COGENERATION (COGE	0055	002	512
VA	King William ...	ST. LAURENT PAPER PRODUCTS CORP.	0001	003	253
VA	Alleghany	WESTVACO CORP	0003	001	253
VA	Alleghany	WESTVACO CORP	0003	002	130
VA	Alleghany	WESTVACO CORP	0003	003	195
VA	Alleghany	WESTVACO CORP	0003	004	373
VA	Alleghany	WESTVACO CORP	0003	005	170
VA	Alleghany	WESTVACO CORP	0003	011	105
WV	Kanawha	AVENTIS CROPSCIENCE	00007	010	113
WV	Kanawha	AVENTIS CROPSCIENCE	00007	011	102
WV	Kanawha	AVENTIS CROPSCIENCE	00007	012	105
WV	Kanawha	DUPONT—BELLE	00001	612	54
WV	Fayette	ELKEM METALS COMPANY L.P.—ALLOY P PLANT.	00001	006	116

Environmental Protection Agency

Pt. 97, App. D

State	County	Plant	Plant ID	Point ID	NO _x allocation for non-EGUs
WV	Marshall	PPG INDUSTRIES, INC	00002	001	195
WV	Marshall	PPG INDUSTRIES, INC	00002	003	419
WV	Kanawha	RHONE-POLUENC	00007	070	8
WV	Kanawha	RHONE-POLUENC	00007	071	73
WV	Kanawha	RHONE-POLUENC	00007	080	7
WV	Kanawha	RHONE-POLUENC	00007	081	66
WV	Kanawha	RHONE-POLUENC	00007	090	8
WV	Kanawha	RHONE-POLUENC	00007	091	68
WV	Kanawha	UNION CARBIDE—SOUTH CHARLESTON PLANT	00003	0B6	66
WV	Kanawha	UNION CARBIDE—SOUTH CHARLESTON PLANT	0003	0B6	92
WV	Kanawha	UNION CARBIDE—SOUTH CHARLESTON PLANT	0003	0B7	45
WV	Hancock	WEIRTON STEEL CORPORATION	00001	030	31
WV	Hancock	WEIRTON STEEL CORPORATION	00001	088	30
WV	Hancock	WEIRTON STEEL CORPORATION	00001	089	2
WV	Hancock	WEIRTON STEEL CORPORATION	00001	090	110
WV	Hancock	WEIRTON STEEL CORPORATION	00001	091	253
WV	Hancock	WEIRTON STEEL CORPORATION	00001	092	208
WV	Hancock	WEIRTON STEEL CORPORATION	00001	093	200

[65 FR 2727, Jan. 18, 2000, as amended at 66 FR 48576, Sept. 21, 2001]

APPENDIX C TO PART 97—FINAL SECTION 126 RULE: TRADING BUDGET

ST	F126-EGU	F126-NEGU	Total
DC	207	26	233
DE	4,306	232	4,538
IN	7,088	82	7,170
KY	19,654	53	19,707
MD	14,519	1,013	15,532
MI	25,689	2,166	27,855
NC	31,212	2,329	33,541
NJ	9,716	4,838	14,554
NY	16,081	156	16,237
OH	45,432	4,103	49,535
PA	47,224	3,619	50,843
VA	17,091	4,104	21,195
WV	26,859	2,184	29,043
Total	265,078	24,905	289,983

APPENDIX D TO PART 97—FINAL SECTION 126 RULE: STATE COMPLIANCE SUPPLEMENT POOLS FOR THE SECTION 126 FINAL RULE (TONS)

State	Compliance supplement pool
Delaware	168
District of Columbia	0
Indiana	2,454
Kentucky	7,314
Maryland	3,882
Michigan	9,398
New Jersey	1,550
New York	1,379
North Carolina	10,737
Ohio	22,301
Pennsylvania	15,763
Virginia	5,504
West Virginia	16,709
Total	97,159

PARTS 98–99 [RESERVED]